Supreme Court, U.S.
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IN THE SUPREME COURT
OF THE
UNITED STATES OF AMERICA

October Term, 1997

Richard L. Seltzer, Petitioner

v.

Commissioner, Internal Revenue Service, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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55 pp

QUESTIONS PRESENTED

Can an Appeals Court be found wrong and biased for failing to take proper and timely judicial action on factually lawful appeals that are supported by preponderant evidences showing wrongful and biased agency and lower-court actions and lack of actions on clear issues?

Can an Appeals Court be found wrong and biased for intentionally ignoring bias shown by lower-court records that intentionally deleted records of trial-transcript testimony and Administrative Judge's trial decisions in lower Tax Court show extreme deference to respondent and extreme adversity to appellant/petitioner?

Can an Appeals Court be found wrong, judicially biased and unlawful by denying a timely and proper and lawful rehearing request and En Banc rehearing suggestion showing its own Appellate Failures in adequate adjudication, impartiality and fairness in addition to belittling improperly appellant's/petitioner's appeal?

Can an Appeals Court be found wrong, judicially biased and unlawful by rendering decision(s) and orders based on deleted, changed and improper records that defer to respondent, lower Tax Court Administrative Judge and against appellant/petitioner knowing full well, and in advance, such deletions, changes and improprieties exist?

Will the petitioned United States Supreme Court Writ of Certiorari to the Seventh Circuit Court direct also corrections of deletions, changes and improprieties of records and trial transcript shown by the factual evidences in this petition? (See petitioner's comment in regard to the Court's Part III, Rule 10, Considerations Governing Review On Certiorari on page 17 below.)

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THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

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IN THE SUPREME COURT
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October Term, 1997

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PETITION FOR WRIT OF CERTIORARI TO THE
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FOR THE SEVENTH CIRCUIT

Petitioner respectfully asks the Supreme Court to issue a Writ of Certiorari becuase of wrong, judicially biased and unlawful decisions, orders and failures to adjudicate factual evidences of record that support petitioner's appeals. Further, the appeals court affirmed and upheld the lower Tax Court's intentional and calculated (1) deletions of 69 pages of Trial-testimony transcript that supported petitioner's appeals, (2) changes, deletions and erroneous entries made to respondent's records adversely affecting petitioner;s appeals and (3) allowing deletions and extractions of entire lines of evidences without articulation or reasoning by the Special Trial Judge in rejecting such contrary evidences. These allowances of Tax-Court failures to provide meaningful and lawful judicial review and articulation of reasons entire lines of petitioner's contrary evidences were rejected, is a major deviance by the Seventh Circuit Court from its past decisions in cases. This Seventh Circuit Court has had a consistent and long-standing firm judicial commitment to decisive recognittion that meaningful and lawful appellate judicial review require Adminstrative Law Judges to articulate reasons for rejecting entire lines of evidences so the articulation allows the court to trace the path of lower Court's reasonings in rejecting contrary evidences. (1) However, in petitioner's case

(Appellate No. 96-3943) the Seventh Circuit denied continuing objections of record to the Tax Court and itself on improper deletions of evidences and military services credits. See Appendix A. The Seventh Circuit Court Order dated August 27, 1997 (not to be cited) is Appendix B. Rehearing petition includes specific charges made to the Seventh Circuit. In petitioner's Petition for Rehearing and Suggestion for Rehearing En Banc dated September 8, 1997 charges against the court are factually supported. The U.S. Tax Court Memorandum Opinion dated May 23, 1996 is Appendix C. This Seventh Circuit Court has unlawfully with the purpose of bias on behalf of the Tax Court and respondent, has abridged its own mandated responsibilities. (1) Petitioner charges his Constitutional rights to a fair and impartial court proceeding and basic justice have been severly abused by both courts as decisions, orders and opinions in Appendices B, C, and D clearly show. (2) Further, issues presented in this Petition for Writ of Certiorari are unresolved and unadjudicated issues in prior Cases Seltzer v. OPM, 833 F. 2d 975 (Fed. Cir. 1987), Sup. Ct. No. 87-6715 (Feb. 27, 1988) and 980 F. 2d 744 (Fed. Cir. 1992), Sup. Ct. Co. 92-1565 (Jan. 14, 1993) as prior Writs of Certiorari.

> Title 5 U.S.C., Section 706 (note 26). Judicial Review--Agencies Generally. Administrative action is conclusive on review unless such action is not in ac cordance with law, is unsupported by competent, material and substantial evidence, or is arbitrary or capricious. R.F.C. v. Lightsey, C.A.S.C. 1950, 185 F. 2d 167.

OPINIONS BELOW

Entered/Reported as United States Court of Appeals for the Seventh Circuit Order dated August 27, 1997 that affirms the United States Tax Court, No. 96-3943, Richard L. Seltzer, Petitioner-Appellant v. Commissioner of Internal Revenue, Respondent-Appellee. Appears in Appendix B, noted above. Entered/Reported as United States Court of Appeals for the Seventh Circuit Order denied Petition for Rehearing and declined Suggestion for En Banc Rehearing from Petitioner-Appellant dated October 3, 1997, Richard L. Seltzer, Petitioner-Appellant v. Commissioner of Internal Revenue on Appeal from the United States Tax Court, No. 96-3943. Appears as Appendix D. En-

(1) See Herron v. Shalala, 19 F. 3d 329, 333 (7th Cir. 1994); Binion v. Chater, 108 F. 3d 780, 788 (7th Cir. 1997) and Travis v. Sullivan, 985 F. 2d 919, 924 (7th Cir. 1993).

(2) Title 5 U.S.C., Section 706 (note 415). Judicial Review--Agencies Gener ally. Grounds on which agency acted must be clearly disclosed in, and sus tained by the record, and agency must make plain its course of inquiry, its analysis and its reasoning. American Petroleum Institute v.Enviromental ProtectionAgency, C.A. 10, 1976, 540 F. 2d 1023 (also see C.A. 4, 1976, 540 F. 2d 1188).

tered/Reported as MEMORANDUM OPINION from United States Tax Court dated May 23, 1996 as T.C. Memo. 1996-240, Docket No. 25353-93, Richard L. and Betty L. Seltzer Petitioners v. Commissioner of Internal Revenue, Respondent. Appears at Appendix C, noted above.

JURISDICTION

Statutory basis for jurisdiction by the Seventh Circuit Court are IRS Codes Sections 7482(b) and 7483 and Title 5 U.S. Code 7703(a)(1) and (b)(1). Jurisdiction of the Supreme Court is invoked under Title 28 United States Code, Section 1254(1) and Section 1651, Issuance of Writs. Judicial Power of the Supreme Court in this Petition for a Writ of Certiorari is also in law and equity under Section 2, Article III, Constitution of the United States because petitioner claims his Constitutional Rights have also been unlawfully denied, curtailed and adversely abused by both Seventh Circuit and Tax Courts as specified above with Appendices. Constitutional Amendent I, Redress of Grievances; Amendent IV, Rights Against Unreasonable Seizures and Amendment V, Deprival of Property Without Due Process and Compensation for Public Use. Specifically these Amendments grants petitioner the following:

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment I: The right of petitioner to have free and unrestricted right to petition the government for redress of grievances. Petitioner was adversely restricted by unlawful and intentional deletions and changes to facts and case records by both lower courts.

Amendment IV: The right of petitioner to be secure in papers and effects against unreasonable seizures. Petitioner's Military Service Reserve time totalling 7 months and 6 days was unlawfully reduced from Civil Service Retirement annuity by Office of Personnel Management between 1975 and 1983; a deletion of reemployment military benefits stated as overpayment collections. Other overpayment collections associated with these 216 days of military service are also noted in this petition for Writ of Certiorari.

Amendment V: Petitioner should not have been deprived of property as annuity income without due process nor shall such property be in public use without compensation. Military Reserve Service days totalling 216 were reduced for repayments to the Civil Service Retirement Act funds for Treasury public use. Court Orders and Orders of record by the Merit Systmens Protection Board to refund these unlawful overpayments in 1989, 1990 and 1991 were neither acknowledged nor complied with by Office of Personnel Management and those repayments are in petitioned Writ of Certiorari.

STATEMENT OF THE CASE

In 1983, 1985 and 1987 petitioner's Military Service of 7 months 6 days (216 days) had been deleted from the intial 1974-1975 annuity compensations and the Employee Annuitant Master Record Printouts dated November 23, 1983, May 8, 1985 and April 23, 1987. Then, instead only 11 years of full-time active duty was included in respective total-service periods of 22-00 years (1983), 21-11 (1985), and 21-11 (1987). See Appendix E-1 to E-3. Further, during proceeding of prior case the Office of Personnel Management bluntly lies in claiming without any evidence whatever the "Total military service credited is 11 years 7 months and 6 days." in Appendix F-1 letter dated July 26, 1993 and "This includes 11 years 7 months 6 days of military service." in Appendix F-2 letter dated April 19, 1985. Further these two letters also show unfounded and unlawful $27.00 and $37.00 monthly overpayment collections made in 1989, 1990 and 1991 from annuity that were ordered refunded by both the Merit Systems Protection Board and the Courts during those years, as unfounded Military Service Social Security Benefits in annuity. Additional monthly arbitrary overpayment collections from annuaity shown on Appendices E-1 to E-3 that were made without basis, evidences or due process beginning in 1983 total an additional overpayment repayment total of $139.69 that are also included as issues in this petiton for Writ of Certiorari. All these facts were extensive in cases Seltzer v. OPM, 980 F. 2d 744 (Fed. Cir. 1992) as United States Supreme Court Docket No. 92-1565; earlier prior case for these issues through 1986 to 1988 noted on page 2 above as Seltzer v. OPM, 833 F. 2d 975(Fed. Cir. 1987), Cert. denied, 486 U.S. 1024 (1988). All overpayment repayments made by petitioner to the Civil Service Retirement Act (CSRA) fund were neither refunded nor recomputed into annuity between 1986 and 1991, the last year in this petition on present case with the Commissioner, Internal Revenue Service as respondent.

Present Appellate Court Case No. 96-3943 for review of records in petitioned Writ of Certiorari was a petition to the Seventh Circuit Court for review of decisions of the U.S. Tax Court shown in Appendix C. Petitioner agrees with income amounts but objects and disagrees with the Tax Court's Special Trial Judge Lewis R. Carluzzo's opinions sustaining respondent's IRS determinations of deficiencies for 1989, 1990 and 1991 in respective amounts of $1,980, $2,032 and $2,332. Petitioner has posted bonded amounts to the IRS including excessive penalties and interest of increased respective totals of $3,922.05 (paid 10-03-97), $3,405.46 (paid 4-17-97), and $3,1816.18 (paid 4-17-97). Reasons were threats against petitioner and deceased wife shown on Appendix G-1, G-2, G-3 to take paychecks, bank accounts, automobiles or other property. The 1989 supposed deficiency was on a permanent hold from date of July 17, 1997 as were also the years 1990 and 1991. See Appendix G-1. I was to do nothing on 1989 per the Cincinnati IRS office; then the October threat on 1989 came again so I paid it under duress. Appendix C decisions by Judge Carluzzo is not the most important ev-

idence in this case. In the Tax Court trial of February 16, 1997, there were literally rampant biased, unfair, unlawful and non-judicial issues occurring often, during trial that are clearly shown in the true Trial Transcript which had 69 pages deleted by the Justice Department Counsel before submission to the Seventh Circuit Court as an imperfect and biased record totally on behalf of respondent. All pages of the 69 deleted from the record to the Seventh Circuit Court supported petitioner's arguments with factual evidences. First below petitioner excerpts actual objections to the Tax Court dated April 11, 1995 in Tax Court Trail on Case Docket No. 25353-93. Next are also the objections made to the Seventh Circuit Court in Brief dated January 21, 1997 and Rehearing Petition dated September 8, 1997.

OBJECTIONS TO TAX COURT TRIAL PROCEEDINGS

The following, indented, single-spaced texts are exact quotations from debriefed objections dated April 11, 1995 from petitioner to the Tax Court regarding Trial Proceedings dated February 16, 1995. Page number references are pages in Trial Transcript which originally had 95 pages of recorded text but respondent's counsel (Justice Department)destroyed by eliminating 69 pages that supported petitioner's charges in testimony as noted below. The Seventh Circuit Court had no transcript evidence for petitioner therefore decisions and opinions and order of August 27, 1997 were based upon inadequate facts and evidences and deferred greatly to respondent as biased, unfair and unlawful adjudication by this court. See Appendix B which petitioner objects to below (numbered for convenience).

1. The facts in the proceedings transcript of this trial show that petitioner's Cross-examination and questions to hostile witness Thomas W. Smith representing the Office of Personnel Management, Washington D.C. were several times unduly restricted and curtailed by the Court for an apparent reson. As a result, petitioner's facts of record in evidential documents and stipulated is sues for argument were not presented on the record and petitioner's rights of both due process and a fair and unbiased trial were adversely prevented by this Court. In support of petitioner's claims of improper deference to the re spondent(IRS) during this trial are these transcript records; statements tran scribed in court during trial:

a. Page 7. Court: "And you will be entitled to examine Mr. Lawson's witnesses should he call any." (Only one was anticipated from OPM).

b. Page 75. Court: "And I will not allow you to examine this witness for the purpose of acquiring any information with respect to your other proceedings. Your questions will be limited —to the disputes here in the Tax Court."

c. Page 83. Court: "We're not going to have the witness do math on the stand. Whatever the difference is can be figured out from the record." (differ-

ence between $17,016 and $13,661.74).

d. Page 85. Court: "Mr. Seltzer, I will not allow you to get into your dispute with OPM other than as it relates to your tax situations for the '89, '90, and again '91." (on Smith's knowledge of case).

e. Page 87. Court: "Well, again, Mr. Seltzer, and I understand that Mr. Lawson made an inquiry with respect to the $7200. Where are you headed? Do you have a specific point?"

f. Page 91. Court: "I have it (judicial authority and jurisdiction) with respect to your tax controversy, Mr. Seltzer. I do not have it with respect to your controversy with OPM."

(A new Note: All pages above were included in 69 pages destroyed and/or elimated from Trial Transcript by Justice Dept. for respondent be fore "true copy" of transcript is sent on December 18, 1996 to Sev enth Circuit Court, as petitioner noted on page 5 above.)

2. First and foremost are the facts in all record both in this trial, in the Court Petition in November 1993, in the Trial Memorandum of February 13, 1995, in the Conference notes of January 17, 1995 and all prior IRS correspondence back to 1992, the petitioners have consistently and strongly emphasized that the issues now before the Court were issues resulting solely from OPM's unfounded and illegal overpayment collections, offsets, reductions and com putations between 1974 and 1993, between 1983 and 1995 and between 1986 and 1995. Further, the IRS respondent (Mr. Lawson and the counsel's office) had full and total knowledge of these issues, as well as their knowledge of all petitioners' arguments or the "statute of limitations issues", contra dicting Mr. Lawson's answer to the Court on transcript page 55: "No, your Honor. The first time I heard about the statute of limitations arguments was approximately 12 to 13 days ago."

3. In this regard of adversities and lack of due process faced by petitioners in this trial, many answers to the Court on direct and cross-examination questions were erroneous at best and untruthful at worst with foregone knowledge, made by witness, and respondent (counsel Lawson). Answers are as follows:

a. Respondent is wrong in saying the MSPB (Merit Systems Protection Board) January 3, 1990 decision is one of many and "this was ultimately resolved in a later hearing. (transcript pages 36-37); the $7,291, $73,827, and military issues. The February 12, 1993 U.S. Supreme Court Petition (copies to the Court and respondent) shows the issues of $7,291, $27.00 offset and $1,418 were continued into 1991 (Dec. 31, 1991 order) and into 1992 (Apr. 23, 1992 order) with MSPB continuing to order refunds. Petitioner's challenge and appeal on OPM's (Office of Personnel Management) 1986 recalculations and overpayment collections are now in MSPB under CH-0831-0675-I-1. Transcript pages 86-88 shows witness (Smith) fully aware of these facts.

b. Mr. Smith is wrong in his assertions on transcript page 71 that petitioner Seltzer could not have contributions to annuity at time of retirement dated September 1, 1974. The Federal Civil Service Retirement Law cited in Civil Service Commission (MSPB) Pamphlet No. 18, states: "These contributions may be made only while the employee is in the service, or at the time when his annuity claim is actually being adjuicated by the Civil Service Commission." Adjudicated reductions in 1974-1983, 1983-1986, and 1986-1995 were contributions, deposits or collections on overpayments back into the Civil Service retirement Fund (CSRF); considered by IRS as NON-CASH INVEST MENTS AND NON TAXABLE AS REFUNDS. IRS Codes 4027 Section (72e); see below.

c. More disturbing are unthruths in Mr. Smith's answers. He says on transcript page 85 to the Court; "The figures that are on the 1989 summary of payments on his notices of annuity adjustment do reflect all the different catagories that are shown on the summary." (on the W2P Form in the Court's question). Court "0-kay. So the summary would in fact, be exactly that, a summary of what took place during the year." THE WITNESS (Smith): "Yes". This isn't true. The 1989 Notice of Annuity Adjustment for payment dated 01/01/89 shows new status in gross monthly annuity as $1,089.00. Total for 1989 on this notice received by petioners on December 12, 1988, is to be $13,068.00 and net payment is $868.56 X 12 months=$10,422.72, not the total $11,111.28 shown on respondent's Trial Exhibit I.

d. Between 1983 and 1988 these "differences" between the W2PAs and the RI 20-53 Forms totalled for the years is $12,225.00. Even respondent's figure carried through 1991 totals on page 4 of respondent's Trial Memorandum is $13,844.90. In effect, respondent's own witness Smith contradicts these amounts on transcript page 85 to the Court.

e. Disturbing also is the untruth of htis same witness (Smith) to the Court as stated on Transcript page 86: "Yes, initially the Board (MSPB) instructed us to return the total of these deductions (the $7,291) to him (Seltzer)". Court: "What was the ultimate disposition of that $7,291, the refund?" Answer. "A subsequent order from the Merrit Systems Protection Board rescinded that so we did not refund the money." There was not an MSPB recission of the $7,291.00 issue of overpayment collections for 36 months at $202.52 monthly through 1989. OPM ignored ongoing MSPB and Federal Court orders on refunds of the $7,291 and $27 issues until two partial payments were made of $2,060 in 1992 and $1,133 in 1993, both of which were again included in Gross Income as reported to IRS on the W2PA forms for these years. THESE WERE REFUNDED PARTIAL AMOUNTS ON TOTALS COLLECTED, OFFSET AND REDUCED FROM ANNUITIES AS FOLLOWS (cited in Conference-Matters Brief dated January 17, 1995 and Tax Court Trial Memoran-

dum dated February 13, 1995):

(1). $12,789 (incl. 7,291, 4,080, 1,418) Partial 2, 060 (1992).
(2). $13,712 (27.00 and 37.00 issues) Partial $1,033 (1993).
(3). $6,268 (Military, SSA Benefits repaid).
(4). $30,000 216 days, $330.00 approved/credited military service credits deducted from annuity and contributeed/deposited toward the Civil Service Annuity (CSRA) funds.

f. Contradicting witness Smith's testimony, there are continuing repayments, contributions, deposits (or whatever name) continuing in the taxable years 19901 and 1991 and still continuing in 1995. See transcript page 71. The Court has heard respondents claim that tax years cited above, especially 1983 and 1986 through 1995, are irrevelant excerpt for 1989, 1990 and 1991 tax years. The Court has admitted petitioners' Exhibit No. 10 "subject to conditional relevancy being established at some point during the consideration of this case." Obviously respondent would prefer 1989-1991 as the only tax years in dispute but respondent (counsel Lawson) and the IRS were consistently and often shown indisputable evidences cited above that the 1989-1991 Taxable Years resulted from unlawful OPM/Employer actions in 1983-1986 from both the Gross and Net Taxable annuity amounts and resulted in MSPB adjuications and specific refund findings between 1984 and 1992.

g. Petitioners have another issue of contention with this Court that is critical to evidences and procedures of admissions of documents. The petitioners have been exceedingly diligent in serving both the Court and respondent evidential documents in support of arguments and claims since Petition to this Court in November 1993. Further, the Tax Court Rules of Practice and Procedures are in hand and followed since receipt from the Court in February 1994 of commencement of case 25353-93 on November 24, 1993, Petition date. See court's Rules on filing documents (Rules 22-23) and Service of Papers (Rule 21); Adducement of Evidences (Rule 149) and particularly Rules of Evidences (Rule 143), and as they concern Expert Witness Reports (143(f)) which were neither complied with by the respondent nor the Court. Petitioners had not received the required report by the respondent's witness Smith nor the required copy of expert-witness report(s) from respondent, before the trial call on February 13, 1995. Petitioners therefore ask the Court to strike; declare moot, all testimony of witness Thomas W. Smith as excludable under Rule 143(f). Further, petitioners see nothing in published Tax-Court Rules that limit petitioners access to a witness as done by this Court or limit evidences and documents properly filed, served and prepared uder the Tax-Court's Rules as further done so by this Court. To wit:

(1) COURT: "The only ting I will consider in resolving this case is the evidence that is submitted during this trial." (In transcript pages 5 through 8. Both petitioners' stipulations of facts with Exhibits, and the Trial-Memorandum exhibits were accepted by respondent but refused as evidences by this Court, after accepting respondent's Exhibits).

(2) COURT: "Likewise, the trial memorandum which I filed this morning also does not constitute evidence, these are merely the statements of the parties' positions. Okay?" (transcript page 11).

(3) COURT: "Okay. Well Mr. Seltzer, as I indicated a little bit earlier the trial memorandum is not evidence." (transcript 19).

(4) COURT: "Let me again remind you (to petitioner) that merely because a document was attached or annexed to your trial memorandum it is not evidence in the case. If you want a specific document to be considered then you must make an offer of that document fromally during the course of this proceeding." (transcript page 21). (The word "formally" was not explained).

(5) COURT: "Again even if it was a part of that memorandum (the Trial Memo.), Mr. Seltzer, it's not in the record." (transcript page 22).

h. There were other limitations placed upon petitioners' efforts to introduce evidence and facts supporting arguments but the Court, on transcript pages 44 and 45 stated there was nothing in petitioners' stipulations that could not be presented in a brief. To wit:

(1) COURT: "As a matter of fact this is very much in the nature of a brief." (transcript page 45).

(2) COURT: "The other references and the arguments and your responses to Respondent's position and your position with respect to the treatment of these amounts and the authority for that position are all matters that you can present appropriately to the Court on Brief." Transcript pages 43 to 45 show petitioner's (Seltzer's) protest on lack of timeliness.

4. OPM Office has consistently ignored both MSPB and Court orders to refund and rectify the unfouded offsets, reductions in annuity and "overpayment" collections made throughout these years (1974 to 1994). Petitioners' Exhibits 1 through 9 are documents recapping these issues and problems since 1983 that are retroactive to 1974 income and later taxable income years. These issues still continue unresolved, but in all respects these issues of contention with OPM are VERY COMPLEX and same issues now in the Tax

Court and within the Court's jurisdiction. The Tax Court is wrong (transcript page 85) in limiting 1989-1991 as one, single issue package when 36 monthsof $202.52 illegal and unfounded overpayment collections partially refunded (1992), began in 1986 and ended in 1989 and other annuity reductions are still hidden in 1983 through 1994 taxable income as refunds; hidden as TWICE-TAXED INCOME AMOUNTS.

5. Petitioners have presented to the Court legal authorities drawn solely from the IRS Commissioner's own Codes, Rules, Regulations and Instructions. These legal authorities, particulary those cited by petitioners from IRS Code 4027-3 through 4027-6 and specifically Sections 72(d) through 72(g) have been included as exhibits and references in the January 17, 1995 Conference Matters Brief given this Court; also in Petitioners' Stipulations Brief dated February 16, 1995 (REFUSED BY THE COURT; that all IRS Legal Authorities treats certain Federal Plans on Annuities and Contracts specifically under IRS Code Section 72 totally as NON-CASH BASIS PLANS THAT COVER FULLY THE CONSIDERATIONS, DEPOSITS, CONTRIBUTIONS (AND REPAYMENTS) INTO THE PLANS AND the REFUNDS, ALLOCATIONS, RECEIPTS AND EXCLUSIONS FROM BOTH THE PLAN AND PLAN INCOME.

a. Respondent, on transcript pages 9 and 10 tells the Court; "--this is not a complex case and petitioner Seltzer is a cash-basis taxpayer."

b. The Court stated in reply; "--in reviewing the trial memorandum I am having a hard time--or had a hard time figuring out what the case was all about."

Petitioners in Trial Memorandum (not allowed as evidence) told the Court and respondent (again) that IRS Code 4027 Section 72 (1995) is lawful authority that covers petitioners wholly as Federal Contract Annuitants. (transcript page 14). Section 72(e) (1995 IRC Code reference) is specific in excluding petitioners from the "cash-basis" yearly definition cited by respondent. (transcript page 9). Special IRC Rules for Plan Applications;

(1) Section 72(e) of Sections 72(c) through (h), states;

"(2) For purposes of paragraph (1), General Rule, the following shall be treated as amounts not received as an annuity: (A) any amount received, whether in a single sum or otherwise, under a contract in full discharge of the obligation under the contract which is in the nature of a REFUND OF THE CONSIDERATION PAID--. See (E) (1) Full Refunds--. (underlinings parentheses added)

"Any amount to which this subsection applies (A) (E) if received on or after the

annuity starting date shall NOT BE INCLUDED IN GROSS INCOME to the extent allocable to the investment in the contract."(ii) the investment in the contract AT SUCH TIME. (underlinings, capitalizations added)

6. Therefore, in total contradiction of the "yearly cash-basis" status claimed by respondent, petitioners' unfounded offsets, unlawful overpayment collections and annuity reductions by OPM as MSPB/FEDERAL COURT-ORDERED REFUNDS are deductible from Gross INCOME at time refund is ordered. See petitioners' Exhibit 3 where all refundable amounts claimed; 7, 291, 4,080, 1, 418, 27 and 37 (military SSA amounts) and $330.00 monthly military service credits totalling $30,000.00 (1974-1994) are shown as Contractual Refunds still owed to petitioners, less partial payments by OPM in 1992 and 1993. As the Tax-Court should concur in such lawful orders and approve petitioners' non-cash and deductible REFUNDS of $10,997.84, $10,242.00 and $10,672.00 for 1989, 1990 and 1991 respectively.

7. Petitioners have been ill-served during the Tax-Court trial for all reasons given above. The unwarranted incident of respondent advising the Court that witness Smith "had a plane to catch very soon" further curtailed any cross-examination when the Court excused this witness and wished him "Good luck in catching your plane." (transcript page 88). Abrupt departure of witness Smith left unexamined (transcript pages 90 to 92) issues pertinent to this trial that were in Discovery Letters (to OPM) of November 28, 1994 and January 9, 1995 (Encl. 1). Relevancy of 1983-1994 documents was raised by respondent even though witness Smith testified that OPM "--did make a variety of deductions over time." Petitioner had every right to cross-examine this witness on such varieties beginning in the year 1983. (transcript page 82). The periods and years between 1983 and 1994 ARE TOTALLY RELEVANT IN (Tax-Court) CASE 25353-93.

8. Also, this Court allowed "math" (mathematics) to be discussed at great length by witness, Court and respondent (transcript pages 23 through 32). Yet petitioner's one instance of cross-examination on "math" (transcript page 82) on difference between 13,661.74 and 17,016 was cut short by the Court:

"We're not going to have the witness do math on the stand. Whatever the difference is can be figured our from the record." After trial, "figured out" by who? And for what purpose if not now evidence? Respondent Lawson was allowed extensive examination of this hostile witness on contributions, payments, repayments, overpayments and "math" as shown on transcript pages69 through 74. Petitioners were DENIED cross. (3).

9. Petitioners charge this Tax Court Special Trial Judge deferred unfairly against petitioners, with admonishments, limitations and curtailments of both evidential documents and testimony from both respondent and hostile-witness Smith. Testimony from witness Smith on mathematical correctness and computations of his statement that OPM was preparing an explanation on petitioners' November 1994 through January 1995 Discovery Letters (Encl. 1) was critical for petitioners' case. Seemingly this trial was lengthy and time consuming as a reason for haste. As this was a "regular case" as noted by the Court, a continuance of the case and/or an overnight stay by witness Smith would have been proper instead of his need "to catch his plane." More justified should have been a Court ordered withdrawal of IRS deficiencies/refunds shown above.(3)

(End of Tax-Court Trial Objections)

Following objections are exact quotations from both the petitioner's Briefing to Seventh Circuit Court (Jan. 21, 1997) and his Petition for Rehearing and En Banc Suggestion (Sept. 8, 1997) which are the on-going results of trying toget this court to review both trial records detailed above, and the additional issues with the Tax Court subsequent to the trial. These are chosen for brevity and necessity of clarification of the complexities manifest in this case now before the Spureme Court in the Petition for Writ of Certiorari. The records of this case history between the first meetings with the Regional IRS employees in May 1992 on tax years 1989, 1990 and 1991 have proceeded uninterrupted to the present date, a period of five and one-half (5 1/2) years. IRS and lower-Court actions, show the errors, dishonesties and toatl disregard for both Administrative and Judicial lawful proceedings, including calculated abuse of records. See Appendix H-1 and H-2. Petitioner has a concern a Supreme Court approval of this Petition for Writ of Certiorari to the Seventh Circuit Court will result in abused records lacking support for all of petitioner's claims against respondent, the Tax Court and the Seventh Circuit Court. A note on IRS actions; the 1989 year was the only year petitioner and his deceased wife were advised of a deficiency in 1992. One year later, in May 1993, IRS without reason or basis, "lumped" years 1990 and 1991 into correspondence without either appeals or recourse of discussion on reasons. Our continuing objections fell on " deaf ears" during all these years.

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(3) Petitioner advises this Supreme Court that all of the single-spaced, under lined and capitalized text and parentheses and transcript numbers are in the original briefed pages to the Tax Court dated April 11, 1995.

OBJECTIONS TO SEVENTH CIRCUIT COURT ON TAX COURT
Extracts From January 21, 1997 Briefings

1. The July 26, 1996 letter and enclosures to the Tax Court cited as petitioners' Rule 155 computation (above) is Appendix D. (4) Enclosure 1 (Appx. No. D-2) with this letter is dated July 10, 1996, and returned all erroneous documents to the Tax Court received as respondent's computations to a William A. Seltzer which were without adjustments, explanations and different from erroneous service copy computations returned to respondent on June 24, 1996. As shown, appellant particularly objected to Tax Court Rule 155 as basis without reasons for all opinions, decisions and orders by Special Trial Judge Lewis R. Carluzzo who was also sitting Judge in February 16, 1995 Tax Court Trial in Indianapolis, Indiana. Also considered improper was this Judge's sole findings for IRS on the IRS deficiencies in 1989-1991 pursuant to his Tax Court's Memorandum Opinion 1996-240 dated May 23, 1996, taking into consideration Rule 155 computations and incorporating facts recited in respondent's computations as the findings of the Court; see Appendix C. (5) His August 1, 1996 Order, Appendix B (6) improperly and wrongly had petitioners' Rule 155 Computation. See Appendix D. (7) This July 26, 1996 letter refers to the July 10, 1996 letter (Encl. 1) where all erroneous and mis-stated documents dated July 5, 1996 from the Tax Court were returned, asking for advice on corrected information, corrected respondent's computations and other dollar-amount computations to respond to under Rule 155; we stated we could not respond to something we did not have.

2. Appellant does not make these charges of bias and an evident showing of deference for respondent lightly; these are serious charges. Appellant has been consistent and adament in his criticisms of the Tax Court trial conduct, opinions and orders by this Judge, Appendix E, F and G. (8) Following excerpts are from February 16, 1995 Tax Court Trial Transcript as the answer on cross from respondent's witness Smith:

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(4) Appendix D is herewith as Appendix I-1 to I-4 (5) is also Appendix C herewith, (6) is Appendix J herewith,
(7) is Appendix I-1 to I-4 herewith, (8) are Appendices K-1, K-2 and K-3 herewith.

Note: See the related transcript pages quoted on prior page 6 above for Court's (Judge Carluzzo's statements regarding transcript pages 75, 83, 85 and 87 during this cross.

a. Transcript page 82, line 14. A "The $202.52 deductions were overpayment repayments and just..."

b. Transcript page 83, line 9. A "The overpayment deductions that we have taken over time out of your variety of checks did reduce the gross annuity amount that we reported on your W2P."

c. Transcript page 83, line 18. A "The gross annuity amount on your W2P reflects the gross monthly benfit that you're entitled to less any adjustments to the gross that we've recollected as overpayments."

d. Transcript page 83, line 23. A "The overpayments are all included as reductions in calculating the gross annuity amount that we've put on your W2Ps."

Above answers were to questions on whether these amounts were overpayment and repayment collections, whether they were gross instead of net income totals after repayments and the fact that such repayments would not be shown when reduced from annuity. So the Judge is wrong in his statement on page 4 above (9) about OPM repayments. He has his decisions without facts of the on-going 1989-1991 OPM repayments, considered from Appendix (A)10 in that case, Tax Court Memo. 1996-240. (10)

Petitioner below quotes specific paragraphs from the Tax Court Memorandum 1996-240 dated May 23, 1996 that is Appendix C herewith. These quotations are exact quotations also included in the Petition for Review of Decisions of the U.S. Tax Court dated January 21, 1997 to the U.S. Supreme Circuit Court. Reasons are these stated opinions are the facts that petitioner claims supports his charges of bias and deference for respondent by this Judge Lewis R. Carluzzo. Further, above quotes to transcript pages 82 and 83 are pages included in the total 69 pages destroyed/deleted from the transcript record sent to the Seventh Circuit Court by respondent;s counsel (U.S. Justice Dept.). See top of page 5 in this petition. Quotations from January 21, 1997 briefings continue:

Page 3, bottom. "No other repayments were made by petitioner to OPM during 1989. No repayments of annuity benefits, through deductions from petitioner's pension benefits or otherwise, were made by petitioner to OPM during 1990 and 1991."

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(9) and (10) are Appendix C herewith, Tax Court Memorandum 1996-240 dated May 23, 1996.

Page 5, center. "Respondent's determinations, having been made in a notice of deficiency, are presumptively correct, and petitioners bear the burden of proving that such determinations are erroneous. Rule 142 (a); Welch v. Halvering, 290 U.S. 111, 115, 1993."

Page 7, bottom. "Whatever petitioner's reasons for the claimed reductions, or exclusions, petitioners have provided us with no authority, and we are aware of none, that would entitle them to do what they did. In general, unless specifically excluded, gross income means all income from what ever source derived, including annuities. Sec. 61 (a)(8)."

3. Appellant has figuratively, as the records show, "flooded" the IRS people in Indianapolis and the Tax Court people, including Judge Carluzzo, with consistent and repetitive claims since 1992 that are lawful, NOT CASH-BASED specific exclusions supporting with authority appellant's actions; IRS Code 4027-3 to 4027-6, Sections 72(d) through 72(f). These are defined in Appendix D (11).

a. Internal Revenue Code (IRSC) 4027-3 to 4027-6 Sections 72(c), 72(d) and 72 (f) are specific with the words:

(1) 72(c) - "--considerations paid for the contract, minus amount received to the extent such amount was excludable from gross income."

(2) 72(d) - "--amounts received as annuity shall be excluded from the gross income until excluded amounts is equal to amount or consideration contributed by employee."

(3) 72(f) - "--amounts paid directly to employee at time contributions of amounts were made, would not be includable in gross income."

b. Further, appellant's repayments of $6,084.60 for Richard and $183.60 for Betty are neither shown, considered or noted by the IRS, even though listed on IRS 1099 Forms for 1989, 1990 and 1991. These 1099 SSA Forms are Appendix Q (12) and are with 1991. These 1099 SSA appellant's December 18, 1996 Docketing Statement to this Seventh Circuit Court.

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(11) Appendix D Enclosures 2 and 3 are Appendix pages included in Appendix page I-1 to I-4 herewith, (12) Appendix Q pages Q-1 and Q-2 are Appendix pages L-1 and L-2 here with

c. All subsequent overpayment repayments made as contributions by appellant under lawful and pertinent IRS authorities cited by appellant were 100 percent employee contributions covered by 4027 Sections 72(c) to 72(f). Appellant includes IRS authorities and particularly, Appendix D Enclosures. (13) Sections 72(c) to 72(f) refer only to contributions wholly or at least 85 percent that are from employee. The Sections 72(a) and 72(b) quoted often in Tax Court proceedings refer only to contributions from both the employing agency (OPM) and the employee as was the case for appellant's 1974 retirement from Civil Service.

Enclosures 2 and 3 (11) specifically to Judge Carluzzo.

(End of Objections to Seventh Circuit Court on the Tax Court)

OBJECTIONS ON SEVENTH CIRCUIT COURT PROCEEDINGS

Petitioner believes it necessary to make extensive quotations from his Petition for Rehearing and suggestion for En Banc Rehearing as this Seventh Circuit Court has departed greatly from the accepted and usual course of judicial proceedings lawfully required as adequate and proper adjudication. Also, this Seventh Circuit Court is in total deference with the improprieties, lack of adjudication, bias and Judicial deviances of the Tax-Court Judge in Court proceedings; in effect sanctioning also lower-court departures from accepted and usual courses of judicial proceedings. Further, the 1989, 1990 and 1991 published orders of both the Merit Systems Protection Board and the U.S. Court of Appeals for the Federal Circuit in Washington D.C., for the Office of Personnel Management to refund military service and social security and other unfounded and unlawful overpayment collections as repayments to the Civil Service Retirement Act

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(13) Appendix D Enclosures are Appendix I-1 to I-4 herewith.

Note: Appendix I-4 page lists Stipulations, Authorities and Issues in evidences in Tax Court Trial. IRS Publication 525 is titles Taxable and Nontax able Income and was also authority used as IRS Definition of "repayments" and yearly-deduction instructions for such repayments within a income-tax year, specifically 1989. Years 1990 and 1991 are unchanged.

Appendix I-4 page also lists all dollar amounts as major issues in contention; $7,291, $4,080, $1,418, $27 and $37 and $51 as offsets and reductions that were unfounded by OPM, and total refunds ordered and due by MSPB and Courts between 1989 and 1991. Appendices E-1, E-2 and E-3, Employee Annuitant Master Record Printouts by OPM for years 1983 through 1987 show offsets, reductions as overpayment repayments.

(CSRA) Fund have been totally ignored by Office of Personnel Management, the Tax Court in trial and decisions and the Seventh Circuit Court in decisions as shown respectively in Tax Court Memorandum 1996-240, Appendix C and the Seventh Circuit Court Order, Appendix B. All of these lower Courts proceedings fall within the Supreme Court's Part III. Jurisdiction on Writ of Certiorari, Rule 10. Considerations Govering Review on Certiorari, subparagraph (a) and (c) regarding departures from accepted and usual judicial proceedings of appeals courts, and conflicted decisions of federal law which call for an exercise of the Supreme Court's Supervisory Power. Further, petitioner's Constitutional Rights on page 3 above have been adversely abused by both of the lower courts in this case. Objections are as follows:

1. DISCUSSIONS Despite appellant's adamant objections that the Tax Court entries into the record were erroneous, incomplete with unlawful changes and deletions, (2) this Court (Seventh Circuit) has further allowed new records eliminations by Justice Department, for lines of evidence that were specific facts relating to the issues raised by appellant--

   (2) See Appellant's Brief, Jan. 21, 1997, pages 9 amd 10, titles Tax Court's Certified Old and New Listings, Appellate Rules 10 and 11 on the Record. (14) and entered as evidence in Tax Court Trial on February 16, 1995. The Justice Department has elimated sixty nine (69) pages of the Transcript from the total 95 pages of Recorded Trial pro ceedings. Because of these deletions from the Supplemental Appendix for the appellee dated December 18, 1996 the only transcript pages as excerpts total 26 and are numbered sequentially 15 through 40. With specific calculations, Justice Department elimated only those evidences and facts supporting all of appellant's overpayment repayment monetary claims. Pages now missing from the Certified Transcript Record in the Seventh Circuit Court are pages No. 1 through 11, 16 through 25, 33 through 50, 54 through 58, 60 through 66, 76 through 85 and 87 through 95. Issues of Tax Court Record and Evidence deleted includes appellant's Social Security Ad ministration facts on over payment repayments to the Civil Service Retirement (CSR) Fund of $27, $37 and $64 monthly and still unresolved; overpayment repayment ordered as refund of $7,291 and still unresolved; overpayment repayment of $202.52 and $412 sums denied and ordered as refunds to appellant in 1989 and 1991 and still unresolved; overpayment repayment of $51 ($1,023 reduced to $972) is still unresolved; overpayment repayment of $4,000 ($17,016 reduced to $13,661.74) and Military Service overpayment repayment of $330 each month still unresolved. Other issues on cross ex-

(14) Pages 9 and 10 are Appendix pages H-1 and H-2.

amination of the IRS witness for Office of Personnel Management (Mr. Smith), entry of new exhibits by appellant (9 each) into the record, certain documents and letters and OPM-IRS Forms as the W-2PA, R120-53 and 1099 were also on deleted pages. Specific comments by Special Judge Lewis Carluzzo, IRS's Mr. Lawson and OPM witness Smith were on deleted pages. Appellant claims as the Seventh Circuit Court did not receive these 69 pages of evidential testimony it based it's order of August 27, 1997 improperly on incomplete and biased records and testimony and ignores further proper and pertinent laws in this case on behalf of appellant. Missing pages 33 through 50 included testimony on the IRS Code 4027 Sections No. 72(c), (d), (e) and (f) including lawful statements allowing employee repayment contributions as deductions from gross annuity within years 1989, 1990 and 1991.

2. SPECIFIC OBJECTIONS BY THE APPELLANT. Objection is made on the unjust and non-judicial personal attacks stated by the Seventh Circuit Court on the Brief being "so poorly written" and "frivolous procedural issues" and dissatisfaction "in some inconsequential". Appellant charges these uncalled-for Court statements are basis for the Seventh Circuit's actions under Circuit Rule 53(c)(2), Unpublished Orders Disposition allowing the Court to omit statements of facts or make incomplete and non-detailed statements in it's Order as it has evidently done in this Seventh Circuit Case 96-3943.

3. Appellant charges that ignoring each and every fact of evidence shown on these documents as noted above, is an erroneous number of deletions of contary evidences and a bias in deference to the IRS by both the Tax Court and the Seventh Circuit Court. Meaningful and lawful appellate review particulary should require reasons that entire and all lines of appellant's contrary evidences were rejected by the lower agency's (Tax Court's) Administrative Judge, as the Seventh Circuit has done in other cases. These facts and substantial evidences have not been addressed as lawful issues before the Seventh Circuir Court in Case 96-3943. Ap pellant strongly objects to the Seventh Circuit Court stating (Appx. A3) (15) wrongly, and repeating respondent's same wrong statements, and repeating the Tax Court's same wrong statements that "Seltzer has failed to direct us to any authorities, and we are aware of none, that would permit him to set off amounts the OPM recouped from his because of an overpayment." and "Seltzer's other set-offs have no statutory basis.

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(15).Appx. A3 is Appendix page B-3 herewith

They arise out of dispute with the OPM and are, therefore, beyond the jurisdiction of the Tax Court." The Seventh Circuit has the evidence that the sum of $7,291 was an overpayment repayment to the CSR Fund that was denied by the Merit Systmens Protection Board and the Federal Circuit Court and OPM refund was ordered in 1989 and again in 1990 and again in 1991. This was a proper "off-set" by appellant of the 36 months of $202.52. Other repayment refunds still pending from 1989-1990 are likewise well evidenced and directed to the Seventh Circuit Court's attention which the Court has denied without reason or basis.

4. These are proper and lawful issues that requrie the review and articulation by the Seventh Circuit Court as such was not made by the Agency Tax Court. Therefore, appellant urges the Seventh Circuit Court approve this Petition For Rehearing and Suggestion For Rehearing En Banc as the only means of a fair and lawful judicial determination not yet made.

5. CONCLUDING STATEMENTS. If, as appellant has noted above, the Seventh Circuit Court, has received from the Justice Department the same Supplemental Appendix dated December 18, 1996 as the Certified Record of appellee with 69 pages of testimony supporting appellant's arguments deleted from the February 16, 1995 Tax Court Trial Transcript, then a major dis-service has been done to appellant. Further the Seventh Circuit can not condone such an unlawful abuse as it has done by allowing the defective and objectionable Tax Court Record also sent to the Court. Appellant argues that with such factual evidences missing from this case that support appellant. The Court has not rendered either an impartial or fair adjudication of Case 96-3943 nor does it have in it's possession adequate records to affirm for respondent as it has.

6. Particularly, these missing transcript pages also supporting testimony that shows both the Social Security Administration overpayment repayment re funds were ordered by MSPB and the Courts, and the Military Service Re serve off-sets were also overpayment repayment refunds that are still all un resolved since 1989, 1990 and 1991. Appendices D1 to D3 (16) are 1983, 1985 and 1987 OPM Employee Annuitant Master Record Printouts that are part of this Case 96-3943 and show the Military Service computation at bottom of pages is exactly eleven years (11:00) when included in appellant's annuity in 1974. An increase in 1985 of $330 for 7 months and 14 days (224 days) of Active Reserve Military Service retroactive to 1954, was deleted by OPM from CSR annuity as an overpayment repayment which is still unresolved.

(16) Appendices D1 to D3 are Appendices E-1, E-2 and E-3 herewith.

See Appendix D3(17) where Military Service is 11:00 in 1987. (18)

7. In regard to the issue of overpaymetns and repayments being twice-taxed sums that are lawfully deductible. First, in 1992 and 1993 OPM made two partial refunds for only $2,060 and $1,033 respectively and these overpayment repayment refunds were included in net taxable income. See Appendix B8 (19) at bottom of page where appellant has cited these two 1992 and 1993 refunds. IRS Publication 525, 1989-1991 covers IRS Repayments for either Annuity or Cash-Basis Repayments. If an overpayment repayment (refund) is made "during the tax year of an amount included in income in an earlier year because at that time you thought you had an unrestricted right to it" you can deduct the amount repaid from your income for this year (1989, 1990, 1991). Underlining and parentheses added. Amounts are being taxed twice.

8. On the matter of appellant's Brief being "poorly written". Appellant admits that difficulty is evident in reading his appeals. However the record shows that appellant's needs to elaborate greatly was and still is necessary because both the Tax Court and Justice Department Certified Records were "tailored" by changing and deleting pages. It was impossible for appellant to properly refer to a certified-record page or exhibit or appendix when he had no true reference identification. Poorly written brief or other document should be no reason for judicial lack of either a proper and comprehensive review or adju dication as is the case in both Tax Court's Order and as repeated in the Sev enth Circuit Order. Further both Courts improperly have deleted both the Social Security and Military Service issues by saying the case "involves only OPM annuity income."

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(17) Appendix D3 is Appendix E-3 herewith

(18) Date May 5, 1985 appellant's annuity was recomputed by OPM to in crease his annuity income for Active Reserve Military Service from $1,006 monthly to $1,418. See Appendix E-2, 1985 Employee Annuitant Master Record Printout. On September 1, 1986 OPM by unfounded offset reduction as an overpayment repayment reduced gross pay from the $1,418 amount to a new amount of $994. See Appendix E-3 with $1,418 deleted and Military Service returned to exactly eleven years (11:00).

(19) Appendix B8 is Appendix page M herewith; a Tax Court page.

9. This case is also described as a "relatively simple case unduly complicated because of Seltzer's incomprehensible brief." (underlining added). This indicated many filed claims are deleted. Finally, appellant charges that the following judicial statements have absolutely no place in either a published or unpublished order of judgement from three Federal Judges. Such personally ugly and unnecessary comments smack of bias and adversity in justice.

Appendix A3 (now B-3 top) "poorly written"
Appendix A3 (now B-3 top) "ambiguously describes"
Appendix A3 (now B-3 bottom) "frivolous procedural issues"
Appendix A4 (now B-4 center) "Seltzer's incomprehensible brief"
Appendix A4 (now B-4 center) "unduly complicated"
Appendix A4 (now B-4 bottom) "inconsequential manner"

10. For all reasons of above objections and conclusions by appellant, the Seventh Circuit Court is asked for approval of this Petition For Rehearing and Suggestion For Rehearing En Banc. At the very least, there is indisputable evidence before the Seventh Circuit Court that the $7,291 ($202.52 X 36) issue and the $27, $37, and $64 issues were ordered as refunds in 1989 and 1991 and such refunds were not made by OPM and these overpayment collections were and still are repayments to the CSR Fund in 1989, 1990 and 1991. (3)The Tax Court should have adjudicated these issues and at the very least, affirmed for appellant on these annuity CSR repayments.

(dated Sept. 8, 1997) (signed Richard L. Seltzer)

(3) Both the Seventh Circuit Court and the Tax Court are fully aware that the two "unidentified" OPM refunds are small and partial amounts of $2,060 and $1,033 from all the overpayment repayment refunds ordered by MSPB and the Courts in 1989 and again in 1991; refunds unpaid that appellant deducted from OPM's income (1099 Form) totals for those same years. These refunds in 1992 and 1993 were included as income by OPM. See page 7 above and Appendix B8. Now page 20, paragraph 7 above and see Appendix M.

(End of Objections on Seventh Circuit Court Proceedings)

CONCLUDING STATEMENT

Supreme Court Rule 14 in regard to Content of a Petition for a Writ of Certiorari is precise in ordering direct, concise and brief circumstances and statements of the case and related facts. In petitioner's case before the Court, he has consistently objected to administrative and judicial proceedings at all levels of Government now parties to this case; Respondent, Justice Department Counsel, Tax Court and Seventh Circuit. Petitioner claims there are preponderant evidences of wrongdoings, numerous departures from accepted and usual judicial proceedings in both the Tax Court and the Appeals Court, and various conflicts resulting with Federal and Constitutional Laws. To prove such claims, petitioner presents to the Supreme Court about 17 pages of verbatim testimony from the February 16, 1995 Tax Court Trial and numerous documents from the records of this case. There are 8 pages of verbatim Tax Court Trail proceedings and testimony. There are about 4 pages of verbatim objections to the Seventh Circuit Court on Tax Court bias, deference and partiality displayed to respondent and adversities to petitioner. There are about 5 pages to the Seventh Circuit Court of verbatim quotations that are indented and single-spaced text showing preponderant evidences of extreme adversities placed upon petitioner(s) in the proceedings of this case between 1993 and 1997.

For these reasons, Supreme Court jurisdiction is considered appropriate and justified under the Court's Rule 10 Jurisdiction to exercise the Court's supervisory power over both lower Courts. These actions by opposing parties to petitioner sustained by the Seventh Circuit Court, and above asserted facts, go far beyond mere errors in judgements, adjudications and mistakes with records. Above verbatim quotations speak clearly in support of petitioner's claims against his opponents that are the parties in this case.

Petitioner requests this Petition for a Writ of Certiorari to the Seventh Circuit Court of Appeals be allowed.

Respectfully submitted,

January 23, 1998
(date)



Richard L. Seltzer, Pro Se
Petitioner

STATMENT OF SERVICE

I, Richard L. Seltzer, petitioner, certify that I have served two (2) copies of all attached documents (Petition and Appendices) by first-class, prepaid postage mail on persons below:

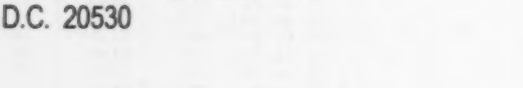
Respondent's Counsels

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Washington, D.C. 20044

Other

Solicitor, General of the United States
Room 5614, Department of Justice
10th Street and Constitution Avenue, N.W.
Washington, D.C. 20530

January 23, 1998
(date)



Richard L. Seltzer, Pro Se
Petitioner

CORRECTED COPY

SELTZER RICHARD L — 399-10-2606 — 23 FEB 21

BEGINNING DATE YR MO DAY	ENDING DATE YR MO DAY	MILITARY PERSONNEL CLASS	STATUS OR COMPONENT	INACTIVE DUTY POINTS	EXTENSION COURSE POINTS	MEMBERSHIP POINTS	ACTIVE DUTY POINTS	QUALIFYING SERVICE YRS MOS DAYS	TOTAL POINTS CREDITABLE
42 08 15	43 03 30	ENL	AUS				224	00 07 12	0224
43 03 31	46 07 19	CON	AUS				1206	03 03 19	1206
46 07 19	49 06 30	CON	CRC					02 11 12	0147
49 07 01	50 06 30	CON	USAR	21		13	17	01 00 00	0053
50 07 01	51 06 30	CON	USAR	4	6	15	275	01 00 00	300
51 07 01	52 06 30	CON	USAR				366	01 00 00	0366
52 07 01	53 06 30	CON	USAR				365	01 00 00	0365
53 07 01	54 06 30	CON	USAR				365	01 00 00	0365
54 07 01	55 06 30	CON	USAR				365	01 00 00	0365
55 07 01	56 06 30	CON	USAR				366	01 00 00	0366
56 07 01	57 06 30	CON	USAR				365	01 00 00	0365
57 07 01	58 06 30	CON	USAR			15	141	01 00 00	0156
58 07 01	59 06 30	CON	USAR	23		15	16	01 00 00	0054
59 07 01	60 06 30	CON	USAR	21		15	16	01 00 00	0052
60 07 01	61 06 30	CON	USAR	30		15	15	01 00 00	0060
61 07 01	62 06 30	CON	USAR	42		15	15	01 00 00	0072
62 07 01	63 06 30	CON	USAR	24		15	13	01 00 00	0052
63 07 01	64 06 30	CON	USAR	32		15	3	01 00 00	0050
64 07 01	65 06 30	CON	USAR	25	16	15	16	01 00 00	0072
65 07 01	66 06 30	CON	USAR	25	16	15	10	01 00 00	0066
66 07 01	67 06 30	CON	USAR	18	16	15	14	01 00 00	0064
67 07 01	68 06 30	CON	USAR	21	16	15	14	01 00 00	0066
68 07 01	69 06 30	CON	USAR	27	16	15	9	01 00 00	0068
69 07 01	70 06 30	CON	USAR			15	5	00 00 00	0020
70 07 01	70 12 03	CON	USAR			6		00 00 00	0006
70 12 04	71 04 29	CON	INACT					00 00 00	0000
71 04 30	~~72 06 30~~	CON	RETIRED						
	81 02 23								

TOTAL: 20 10 12 4976

TOTAL SERVICE CREDITABLE FOR RETIREMENT PURPOSES: 38 06 04

A

BEST AVAILABLE C

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604
Submitted August7, 1997
Decided August 27, 1997*

Before
Hon. Richard A. Posner, Chief Circuit Jugde
Hon. Frank H. Easterbrook, Circuit Jugde
Hon. Daniel A. Manion, Circuit Juged

RICHARD L. SELTZER,
Petitioner-Appellee,
No. 96-3943
COMMISSIONER OF INTERNAL REVEUE,
Respondent- Appellee.

Appeal from the United States Tax Court.

No. 25353-93
Lewis R. Carluzzo,
Special Trial Jugde

ORDER

Richard Seltzer appeals the Tax Court's decision sustaining the Commissioner of Internal Reveue's determination increasing his taxable annuity income and consequent tax liablity.1 We affirm.

Seltzer was a civilian employee of the Department of Defense from 1964 until his retirement in 1974. During this time, he participated in the Civil Service Retirement System. Seltzer also retired from the United States Army Reserves in 1981 and from this time, he Ohio Public Utility Commission in 1983. During the three years at issue, 1989 through 1991, he received civil service retirement benefits as well as retirement benefits from the Army, the Public Employees Retirement System of Ohio, and from Social Security. Since the mid-1980s, Seltzer has been involved in ongoing disputes with the Office of Personnel Management, which adminis-

*After an examination of the briefs and the record, we have concluded that oral argument is unnecessary; accordingly, the appeal is submitted on the briefs and the record. See Fed. R. App. p. 34 (a) ; Cir. R. 34 (f).

1 Betty L. Seltzer, Richard Seltzer's wife, was a party in this case before the Tax Court, But died before the notice of appeal was filed.

OPY

ters the Civil Service Retirement System, concerning distribution overpayments and annuity credit for military service.2

This case involves only annuity distributions for 1989, 1990 and 1991. In 1986, the OPM determined that Seltzer had been mistakenly overpaid $7,291 in annuity benefits during previous years. The OPM began to recoup this overpayment by withholding $202.52 from Seltzer's monthly distributions. The entire amount was recovered as of August 31, 1989, including a withholding of $1,620.16 during that year. The distribution shown on the Form W-2P(A) ((Statement for Recipients of Periodic Annuities, Pensions, Retired Pay, or IRA Payments) issued by the OPM to Seltzer for 1989 was net of the $1,620.16 withholding. No amounts were withheld thereafter.

Seltzer reported pension and annuity distributions of $29,037, $32,165, and $33,840 on line 17a of his tax returns for 1989 through 1991, respectively. These totolas were dreived from the following sources:

Payor	1989	1990	1991
CSRS	$11,447.84	$13,680.00	$14,412.00
PERS	$3,649.32	$3,748.32	$3,847.32
Army	$13,939.68	$14,7362.99	$15,581.40
Total	$29,036.84	$32,165.31	$33,840.72

On line 17b of his returns from 1989 through 1991, Seltzer reported what he considered to be the taxable portion of the foregoing pension and annuity totals, i.e., $18,039, $21,923, and $23,169, respectively. These totals reflected annual exclusions Seltzer made from the annuity distribuitions. As a result of these setoffs, the Commissioner calculated deficiencies in Seltzer's income tax liability from 1989 through 1991 in the amounts of $1, 980, $2,032, and $2,092, respectively. Seltzer petitioned the Tax Court, disputing these deficiencies. The case went to trial and the Tax Court upheld the Commissioner's determinations with the exceptionof an error concerning the 1991 tax year, which was corrected by stipulation of the parties.3 Seltzer appeals.

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2 See, e.g., Seltzer v. OPM, No. 96-3063, 1996 WL 250320 (Fed. Cir. June 12, 1986); Seltzer v. OPM, No. 94-3389, 1994 WL 652196 (Fed. Cir. Nov. 18, 1994); Seltzer v. OPM, No. 92-3450, 1992 WL 295175 (Fed. Cir. Oct. 19, 1992); Seltzer v. OPM, 83 F. 2d 975 (Fed. Cir. 1987).

3 The IRS initially overstated the 1991 deficiency as $2,332.

Seltzer's brief is so poorly written that we, like the Tax Court, are "unable completey to follow (Seltzer's) arguments." (Mem. Op. at 5.) Nonetheless, it appears that Seltzer's set-offs reflect the amounts withheld by the OPM to recoup its overpayment, as well as what he ambiguously describes as a "Social Security Administration offset" and "military service credits." The Tax Court summed up Seltzer's rationale for his exclusions as "amounts that (he) repaid to OPM during the relevant year," which he alleges had already been taxed, and the "amount(s) that (he alleges he) should have received for such if OPM whould have properly computed his CSRS retirement benefits." (Id. at 4, 5.)

Our review begins by determining taxable income. Taxable income is derived from gross income, which includes annuities. 26 U.S.C. P 61 (a) (9), 72(a). A taxpayer may exclude from the taxable amount of annuity distributions received any contributions or investments made to an annuity. 26 U.S.C. P72(b).4 Deficiencies determined by the Commissioner are presumed to be correct and the taxpayer bears the burden of proving otherwise. Pittman, 100 F. 3d at 1313. We review questions of law decided by the Tax Court de novo. Pittman v. C.I.R., 100 F. 3d 1308, 1312 (7th Cir. 1996).

Seltzer has failed to direct us to any authorities, and we are aware of none, that would permit him to set off amounts the OPM recouped from him because of an overpayment. In any event, 1989 was the only relevant year in which the OPM recouped overpayments. The recoupment made that year by the OPM was net of the gross amount reported on the Form W-2P(A), and which Seltzer reported on line 17a of his return. Therefore, any argument that he was trying to avoid double taxation is without merit.

Seltzer's other set-offs have no statutory basis. They arise out of disputes with the OPM and are, therefore, beyond the jurisdiction of the Tax Court. His strategy appeared to the Tax Court, and appears to us, to be attempt to recoup, through reduced federal income taxes, what he claims he should have received in government benefits. A taxpayer is not permitted to undertake self-help measures through his tax returns to gain government is not a unitary creditor in which debits and credits can be balanced between the IRS and other agencies in the taxpayer's discretion.

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4 In this case, Seltzer contributed $6,350 towards his retirement an nuity, which the OPM recouped by the end of 1975. This contribution is not the basis of the exclusions he took in 1989 through 1991.

Seltzer also raises several frivolous procedural issues, only one of which warrants discussion.5 Seltzer argues that under the Taxpayer Bill of Rights 2, 26 U.S.C.P 6201(d), the Commissioner bears the burden of proving the correctness of his returns. This provision provides as follows:

> In any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return filed with the Secretary...and the taxpayer has fully cooperated with the Secretary..., the Secretary shall have the burden of producing reasonable and probative information concerning such deficiency in addition to such information return.

While this stature is likely inapplicable to this case because it went into effect on July 30, 1996, after the trial,6 any retroactive effect would make no difference here. Seltzer does not dispute any item of income reported. There is no controversy as to the amounts that he received in annuity payments or the amounts of non-taxable exclusions. The only contention is whether his exclusions are justified, and they clearly are not. Morever, the Commissioner has produced sufficiently probative information to substantiate its determination of Seltzer's deficiencies in a relatively simple case unduly complicated because of Seltzer's incomprehensible brief.

AFFIRMED.

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5 Although difficult to follow, Seltzer's brief also appears to contend that (1) the administrative hearing he was afforded should not have "lump(ed)" the tax years 1990 and 1991 together with 1989; (2) the Tax Court prevented a witness from answering a math computation quetion (though Seltzer told the Tax Court judge, "(i)t's nor necessary"); (3) he was not served with the Commissioner's Tax Court Rule 155 computations (though he was served by the Tax Court with theCommissioner's Rule 155 computations and sent them back to the court because of what he described as "manifest errors"); and (4) he is dissatisfied in some inconsequential manner with the certified record as transmitted to this court from the Tax Court. None of these contentions bear upon the merits of Seltzer's deficienciencies in his reported taxable income.

6 This case went to trial on February 16, 1995 and the Tax Court issued its opinion on May 23, 1996. On June 12, 1996, the Tax Court denied Seltzer's motion for reconsideration and, on August 30, 1996, it entered its decision sustaining the deficiencies determinded by the Commissioner.

T.C. Memo. 1996-240

UNITED STATES TAX COURT

RICHARD L. AND BETTY L. SELTZER, Petitioners v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 25353-93. Filed May 23, 1996.

Richard L. Seltzer, pro se. Served May 26,1996

J. Eric Lawson, for respondent.

MEMORANDUM OPINION

CARLUZZO, Special Trial Judge: This case was heard pursant to section 7443A(b)(3) and Rules 180, 181, and 182.1 Respondent determined deficiencies in petitioners' 1989, 1990, and 1991 Federal income taxes in the amounts of $1,980, $2,032, and $2,332, respectively. The issue for decision is whether petitioners must include in income the entire amount of Civil Service Retirement System CSRS) retirement benefits received by Richard L. Seltzer during each year in issue. All other adjustments made in the notice of deficiency are computational in nature and will automatically be resolved in accordance with the resolution of the disputed issue.

Some of the facts have been stipulated and are so found. The stipulation of facts and the exhibits attached thereto are incorporated herein by this reference. During the years in issue, petitioners were husband and wife and filed joint Federal income tax returns. At the time the petition was filed, petitioners resided in New Palestine, Indiana. References to petitioner are to Richard L. Seltzer.

Petitioner was employed in a civilian capacity by the Department of Defense from 1964 until his retirement in 1974. As a civilian Federal government employee, petitioner participated in the CSRS, and over the term of his employment made non-tax advantaged contributions towards a CSRS retirement annuity in the amount of $6,350. Petitioner retired from the Department of Defense on September 1, 1974, and began receiving CSRS retirement benefits (the annuity) sometime after

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1Unless otherwise indicated, all section references are to the Internal Revenue Code in effect for the years in issue. All Rule references are to the Tax Court Rules of Practice and Procedure.

July of 1975. Petitioner's annuity took into account his prior military service with the U.S. Army. It appears that petitioner has been involved in long standing, ongoing disputes with the Office of Personnel Management (OPM)2 concerning whether OPM gave him proper credit towards his annuity for his military service.3 Petitioner claims that because OPM failed to give him proper credit for certain military service, his annuity benefits have been less than they should have been.

In 1986, OPM determined that petitioner was overpaid annuity benefits for prior periods in the amount of $7,291. Consequently, OPM began collecting the overpayment by deducting, or withholding, $202.52 from petitioner's monthly annuity distributions. Through this method, as of August 31, 1989, OPM had collected the entire amount of the overpayment, and the deductions from petitioner's annuity distributions did not continue beyond that date. For various reasons, petitioner does not necessarily agree that he was overpaid for the earlier years, nevertheless, through the deductions from his monthly annuity benefits he "repaid" $1,620.16 to OPM in 1989. No other repayments were made by petitioner to OPM during 1989. No repayments of annuity benefits, through deductions from petitioner's pension benefits or otherwise, were made by petitioner to OPM during 1990 and 1991.

During the year 1989, after having his annuity distributions reduced as discussed above, petitioner received annuity benefits from OPM in the amount of $11,447.84.4 Although the Form W-2P(A) issued by OPM to petitioner with respect to the year 1989 characterized the amount as a "gross" distribution, in fact it was net of the $1,620.16 repayment. For the years 1990 and 1991, petitioner received $13,680 and $14,412, respectively, in annuity distributions. The 1990 amount was appropriately reported on a Form W-2P(A), and the 1991 amount was appropriately reported on a Form 1099R.

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2 OPM is responsible for the administration of the CSRS.

3 In this regard see Seltzer v. Office of Personnel Management, 833 F. 2d 975 (Fed. Cir. 1987).

4 Petitioner retired from the U.S. Army Reserves as a lieutenant colonel in 1981. He retired from the Ohio Public Utility Commission as an administrative officer in 1983. During each year in issue, in addition to his CSRS annuity distributions, petitioner also received pension or annuity income from the U.S. Army, the Public Employees Retirement System of Ohio (PERS), and Social Security benefits. The disputed issue in this case involves only petitioner's CSRS annuity.

On line 17a of their 1989, 1990, and 1991 Federal income tax returns, petitioners reported "Total pensions and annuities" in the amounts of $29,036.84, $32,165.31, and $33,840.72, respectively.5 On line 17b of their tax returns for each of the years in issue, petitioners listed the "taxable amount" of such items as $18,039, $21,923, and $23, 169, respectively. In computing the amounts reported on line 17b, petitioners reduced the amounts shown on line 17a for each year by $10,998, $10, 242, and $10,672, respectively. The amounts of the reductions relate entirely to the CSRS annuity distributions.

In the notice of deficiency respondent that petitioners were not entitled to the reductions claimed, and, in addition to other adjustments not in dispute, increased petitioners' income for each year in issue by the amount of the reduction claimed by petitioners in commection with petitioner's CSRS annuity distributions.6

Respondent's determinations, having been made in a notice of defiency, are presumptively correct, and petitioners bear the burden of proving that such determinations are erroneous. Rule 142(a); Welch v. Helvering, 290 U.S. 111, 115 (1933).

Although we are unable completely to follw petitioners' arguments, it appears that they take the position that the reductions, or exclusions, were proper for two reasons. First, they claim that the reductions reflect amounts that they repaid to OPM during the relevant year. As best as we can tell from the record, petitioners allege that petitioner repaid or contributed previously taxed income to OPM in an amount totaling $13,844.90 7 between the years 1983 and 1989. Petitioners contend that the reductions in some manner relate to these alleged repayments or contributions and that unless the reductions are allowed portions of petitioner's retirement benefits will effectively have been taxed twice. Secondly, they argue that they are entitled to reduce the amount received from OPM for each year by the amount that petitioner should have received should have received for such year if OPM would have properly computed his CSRS retirement benefits.

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5 These totals consisted of the following items:

Payor	1989	1990	1991
PERS	$3,649.32	$3,748.32	$3,847.32
U.S. ARMY	13,939.68	14,736.99	15,581.40
OPM	11,447.84	13,680.00	14,412.00
Total	$29,036.84	$32,165.31	$33,840.72

6 In the notice of deficiency, respondent erroneously overstated the amount of the 1991 adjustments on this item. The parties stipulated that the proper amount of the adjustment should have been $10,672

7 Specifically, petitioner asserts that he repaid or contributed income to OPM in the amounts of $152, $1,295.16, $2,562.84m $3,354.26, $2,430.24, $2,430.24, and $1,620.16 for the years 1983 through 1989, respectively.

While we agree, as respondent apparently does, that as a general proposition taxpayers should not be twice taxed on the same income, we fail to see any relationship between the amount that petitioner claims to have reapid to OPM during 1983 through 1989, and the amount by which petitioners reduced the CSRS retirement benefits for each year. In any event, we find that with respect to the years before us, the only repayment made by petitioner occured in 1989, and the amount of such repayment was taken into account in the amount of gross annuity distributions reported on the Form W2-P(A) issued to petitioner for that year. There is no evidence in the record of any repayments with respect to the years 1990 or 1991. We believe petitoner considers the term "repayment" to include amounts that he should have received from OPM based upon his calculations of what his retirement benefits should have been. Such "repayments" do not give rise to the potential of subjecting petitioners to souble taxation on the same income.

Even is the record contained sufficient evidence to do so, which it soes not, it is well beyond the jurisdiction of this Court to determin the proper amount of petitioner's CSRS retirement benefits. While the record does not reveal what petitioner should have received as annuity distributions from OPM during the years in issue, we do know what he did receive, evidenced not only by the amounts reported on the Forms W-2P(A) or 1099R, but by the stipulations of the parties as well. It would appear to us that petitioner, by excluding portions of his annuity distributions, is attempting to recoup, through reduced Federal income taxes, what he claims he should have received in annuity benefits.

Whatever petitoner's reasons for the claimed reductions, or exclusions, petitioners have provided us with no authority, and we aware of none, that would entitle them to do what they did. In general, unless specifically excluded, gross income means all income from whatever source derived, including annuities. Sec. 61(a)(9). More specifically, Section 72(a) provides that, except as otherwise provided in chapter 1 (Normal Taxes and Surtaxes), gross income includes any amount received as an annuity (wheter for a period certain or during one or more lives) under an annuity, endowment or life insurance contract.8 No provision of Section 72 supports the position taken by petitioners in this case.

Over the 3-year period in issue, petitioners excluded a total of $31,911.84 from the annuity distributions petitioner received from OPM. Exclusions from income cannot be implied, but must be unambiguously proven. Cf. United States v. Wells Fargo Bank, 485 U.S. 351 (1988). This petitioners have failed to do. As previously stated, petitioners have not called our attention to any authority, and we know of none, that would permit them to exclude any portions of petitioner's annuity distributions from their income for the years in issue. Accordingly, respondent's determination increasing petitioners' income for the years 1989, 1990, and 1991, as set forth above is sustained, except to the extent set forth supra in note 6.

To reflect the foregoing,

Decision will be entered under Rule 155.

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8 Petitioners do not claim that they are entitled to exclude portions of the annuity distributions in dispute in accordance with Sec. 72(b). According to OPM, petitioner would have recovered his contributions many years before the years in issue. We assume petitioner, pursuant to a prior version of Sec. 72(b), would have appropriately excluded from income the annuity distributions that represented the recovery of his contributions.

United State Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

October 3, 1997

Before

Hon. Richard A. Posner, Chief Judge

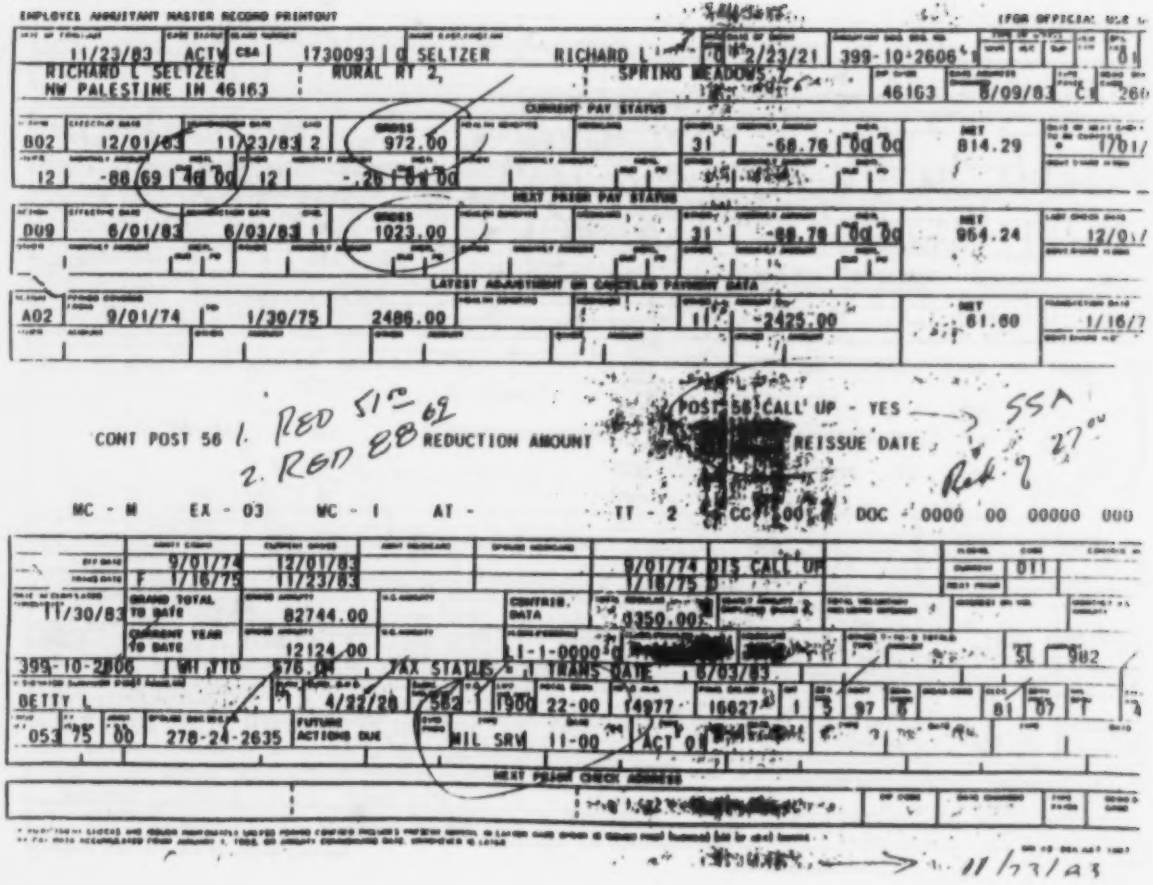
Hon. Frank H. Eastbrook, Circuit Judge

Hon. Daniel A. Manion, Circuit Judge

Richard L. Seltzer, *Petitioner-Appellant,*	(Appeal from the (United States Tax Court.
No. 96-3943 v.	(
COMMISSIONER OF INTERNAL REVENUE, *Respondent-Appellee.*	(No. 25353-93 (Lewis R. Carluzzo, (Special Trial Judge.

ORDER

On September 10, 1997, petitioner-appellant filed a petition for rehearing en banc. All the judges on the original panel have voted to deny the petition, and none of the active judges has requested a vote on the suggestion for rehearing en banc. The petition is therefore DENIED.



EMPLOYEE ASSISTANT MASTER RECORD PRINTOUT

11/23/83 ACTV CSA 1730093 SELTZER RICHARD L 2/23/21 399-10-2606

RICHARD L SELTZER RURAL RT 2, SPRING MEADOWS

NW PALESTINE IN 46163 46163 8/09/83

CURRENT PAY STATUS

B02 12/01/83 11/23/83 2 GROSS 972.00 31 -88.78 814.29

12 -88.69 12 -.26

NEXT PRIOR PAY STATUS

D09 6/01/83 6/03/83 1 GROSS 1023.00 31 -88.78 964.24 12/01

LATEST ADJUSTMENT OR CANCELLED PAYMENT DATA

A02 9/01/74 1/30/75 2486.00 11 -2425.00 NET 61.60 1/16/7

CONT POST 56 1. RED 5[illegible] 2. RED 88 62 REDUCTION AMOUNT [redacted] POST 56 'CALL' UP - YES → SSA REISSUE DATE 27.00

MC - M EX - 03 MC - I AT - TT - 2 CC 00 DOC 0000 00 00000 000

9/01/74 12/01/83 9/01/74 DIS CALL UP 011

1/16/75 11/23/83 1/16/75

11/30/83 GRAND TOTAL TO DATE 82744.00 CONTRIB. DATA 0350.00

CURRENT YEAR TO DATE 12124.00 1-1-0000 [redacted] 31 902

399-10-2606 MI YTD 576.00 TAX STATUS TRANS DATE 8/03/83

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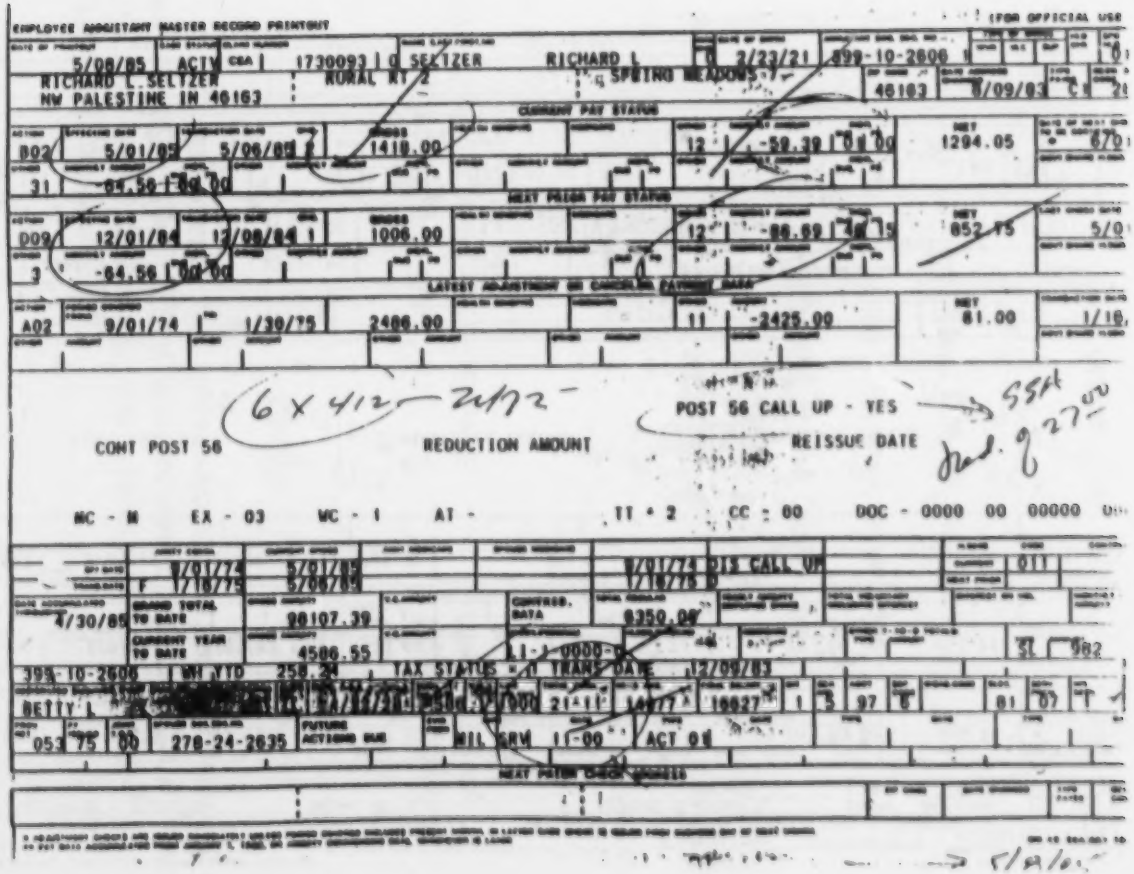
053 75 00 278-24-2635 FUTURE ACTIONS DUE MIL SRV 11-00 ACT 01

NEXT PRIOR CHECK ADDRESS

→ 11/23/83

BEST AVAILABLE COPY

E1



EMPLOYEE ADDITIONAL MASTER RECORD PRINTOUT

(FOR OFFICIAL USE

5/08/85 ACTV C&A 1730093 0 SELTZER RICHARD L 0 2/23/21 499-10-2606

RICHARD L SELTZER RURAL RT 2 SPRING MEADOWS 46163 8/09/83

NW PALESTINE IN 46163

CURRENT PAY STATUS

A02	5/01/85	5/06/85	1410.00		12	-58.39	1294.05	670
31	-64.56							

NEXT PRIOR PAY STATUS

D09	12/01/84	12/08/84	1006.00		12	-86.69	852.75	5/0
3	-64.56							

LATEST ADJUSTMENT OR CANCELLED PAYMENT DATE

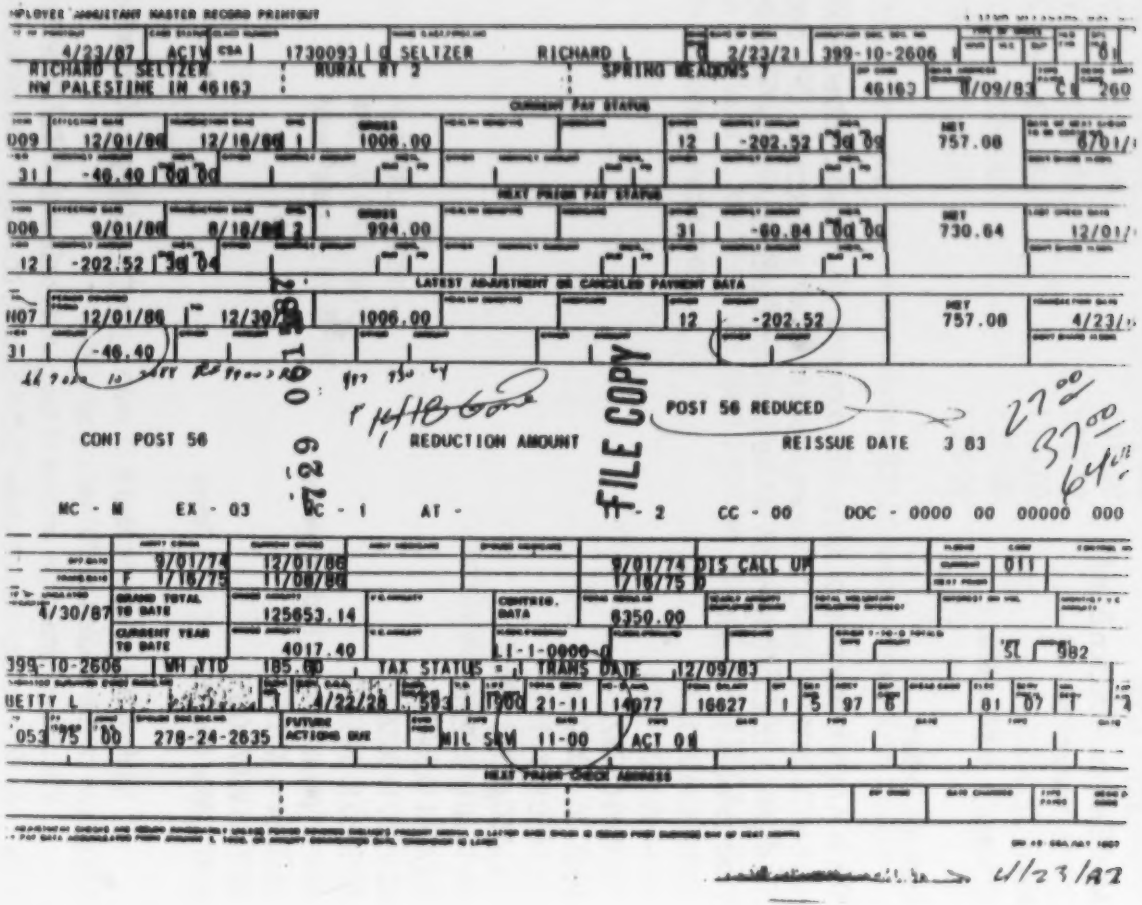
A02	9/01/74	1/30/75	2400.00		11	-2425.00	81.00	1/10

(6 x 412 = 2472

CONT POST 56 REDUCTION AMOUNT POST 56 CALL UP - YES → 55H REISSUE DATE 2700

MC - M EX - 03 WC - 1 AT - TT - 2 CC - 00 DOC - 0000 00 00000

| | | | | | | | |



4/23/87 ACTV CSA 1730093 G SELTZER RICHARD L 2/23/21 399-10-2606

RICHARD L SELTZER RURAL RT 2 SPRING MEADOWS 7

NW PALESTINE IN 46163 46163 8/09/83

CURRENT PAY STATUS

009 12/01/86 12/18/86 1 GROSS 1006.00 12 -202.52 NET 757.00 6/01/

31 -40.40

NEXT PRIOR PAY STATUS

006 9/01/86 8/18/86 2 GROSS 994.00 31 -40.84 NET 730.64 12/01/

12 -202.52

LATEST ADJUSTMENT OR CANCELED PAYMENT DATA

007 12/01/86 12/30/86 1006.00 12 -202.52 NET 757.00 4/23/

31 -40.40

CONT POST 56 REDUCTION AMOUNT FILE COPY POST 56 REDUCED REISSUE DATE 3 83

MC - M EX - 03 DC - 1 AT - 2 CC - 00 DOC - 0000 00 00000 000

9/01/74 12/01/86 9/01/74 DIS CALL UP

1/16/75 11/08/86 1/16/75 D 011

4/30/87 GRAND TOTAL TO DATE 125653.14 CONTRIB. DATA 8350.00

CURRENT YEAR TO DATE 4017.40 11-1-0000-0

399-10-2606 WH YTD 185.00 TAX STATUS = TRANS DATE 12/09/83

UETTY L 4/22/20 503 1 1000 21-11 14077 10627 1 5 97 6 81 07 1

053 75 00 278-24-2635 FUTURE ACTIONS DUE MIL SERV 11-00 ACT 01

NEXT PRIOR CHECK ADDRESS

11/23/87

E3

United States
Office of
Personnel Management
Washington, D.C. 20415-0001

In reply Refer to: CRR:RJI:dsp
Your Reference: CSA 1 730 093

July 23, 1993

Mary L. Detjen
Administrative Judge
Merit Systems Protection Board
230 S. Dearborn St.
Room 3100
Chicago, IL 60604-1669

Dear Ms. Detjen:

This is in reply to your order of July 9, 1993 concerning Mr. Richard L Seltzer, docket number CH-0831-91-0663-C-1. We are in compliance with your decision. OPM credited all periods of active duty military service in the computation of Mr. Seltzer's annuity. These includes the following:

-08/19/42 to 07/18/46
-07/14/49 to 07/30/49
-08/06/49 to 08/22/49
-08/20/50 to 09/03/50
-10/14/50 to 11/18/57
-10/14/50 to 06/21/59
-05/14/60 to 05/29/60
-04/22/61 to 05/06/61
-05/26/62 to 06/09/62
-03/30/63 to 04/12/63
-after employment in the Federal service
-06/28/64 to 07/11/64
-06/2765 to 07/10/65
-07/03/066 to 09/03/66 (216 Days)

Total military service credited is 11 years 7 months and 6 days. Only active duty service can be credited as affirmed in your opinion.

We also continued the amount of the annuity reduction of $27.00 at age 62 for post-1965 military service under Social Security coverage. The correct reduction is $37.00 per month, as explained in our previous letter of September 23, 1992. The annuity was recomputed as follows: Post 1956 Military Social Security:

ANNUITY	REDUCTION	NEW RATE
03/01/83 $952.00	$37.00	$915.00

Cost of living increases

3.9	04/01/83	950.00
3.5	12/01/84	983.00
1.3	12/01/86	995.00
4.2	12/01/87	1,036.00
4.0	12/01/88	1,077.00
4.7	12/01/89	1,127.00
5.4	12/01/90	1,187.00
3.7	12/01/91	1,230.00
3.0	12/01/92	1,266.00

Because the intial reduction was less than $37.00, there is an additional overpayment.

Mr. Seltzer's claim that sick leave was not properly credited was not accepted as vail in your decision. All of the issues raised have been resolved, except for the matter of the additional overpayment.

Sincerely,

William C. Jackson, Chief
Reconsideration Division

cc: Richard L. Seltzer
4839 W. Quail Run Dr.
New Palestine, IN 46163

United States
Office of
Personnel Management

Washington, D.C. 20415-0001
April 19,1995

Nina Puglia
Administrative Judge
Merit Systems Protection Board
230 South Dearborn Street, Room 3100
Chicago, IL 60604-1669

Re: Appeal of
Richard L. Seltzer v. OPM
CH-0831-95-0675-I-1
CSA 1 730 093

Dear Ms. Puglia:

As requested, we are furnishing one copy of our file for the above referenced appeal. Our reconsideration decision dated February 24, 1995, explains our position in this case.

We would like to advise appellant that the service used in the computation of is annuity is 22 years two months 28 days. This includes 11 years 7 months 6 days of military service and 5 months and 20 days sick leave. I have enclosed a computer run of appellant's annuity computation. As of March 1, 1983, appellant's annuity was subject to reduction of $37.00 as certified by the Social Security Administration. The rate shown was computed using the current rate ($952.00) less the $37.00 reduction for a new rate of $915.00. All subsequent cost of living adjustments have been added to the reduced rate. (See Tab. 6) Appellant is currently receiving the maximum annuity to which he is entitled and has received all monies due him to date.

As a matter of information, I can be reached at 202-606-0555.

Sincerely,

Connie E. Torrillo
Agency Representive
Appeals Branch
Reconsideration and Appeals Division

Richard L. Seltzer
4839 W. Quail Run Drive
New Palestine, IN 46163

Department of the Treasury
Internal Revenue Service
CINCINNATI, OH 45999

Notice Number CP 504
Notice Date 07-14-97
SSN/EIN: 399-10-2606
Caller ID: 874127

THERE IS A HOLD - 1989

RICHARD L & BETTY L SELTZER
4839 W QUAIL RUN DR
NEW PALESTINE IN 46163-9641398

WAS ALSO ON 90-91

Final Notice !!

We intend to levy. Please respond NOW.

(To avoid additional penalty and interest, pay your overdue tax in full today.)

Our records indicate you have not paid your overdue tax. The law requires that you pay your tax at the time you file your return. This is formal notice of our intent to levy (take) your paycheck, bank account, auto or other property if we do not receive your payment in full. We can also file a Notice of Federal Tax Lien, if we have not already done so.

PAY YOUR TAX TODAY

Account Summary

Form: 1040	Tax Period: 12-31-89
Prior Balance:	$3,556.19
Last Payment:	$0.00
Penalty to date:	$69.30
Interest to date:	$185.25
New Balance:	$3,810.74

$1,980 - BOND? STOP?

See enclosed Publication 594 that explains your rights and responsibilities as a taxpayer

Questions? Call us at [redacted]3815

Please mail this part with your payment, payable to Internal Revenue Service

Notice Number CP 504
[redacted] 07-14-97

Write the amount:
1040 12-31-89 399-10-2606

Amount Due: $3,810.74

399102606 UP SELT 30 D 8912 470 00000381074

Internal Revenue Service
CINCINNATI OH 45999

RICHARD L & BETTY L SELTZER
4839 W QUAIL RUN DR
NEW PALESTINE IN 46163-9641398

IRS - DO NOTHING ON THIS PER SKIRVIN
8:30-4:00 7/17/99

P 901 779 881

Department of the Treasury
Internal Revenue Service
CINCINNATI, OH 45999

002179 9012
Notice Number: CP 504
Notice Date: 04-14-97
SSN/EIN: 399-10-2606
Caller ID: 874127

RICHARD L & BETTY L SELTZER
4839 W QUAIL RUN DR
NEW PALESTINE IN 46163-9641398

399102606101

Final Notice !!

We intend to levy. Please respond NOW.

(To avoid additional penalty and interest, pay your overdue tax in full today.)

Our records indicate you have not paid your overdue tax. The law requires that you pay your tax at the time you file your return. This is formal notice of our intent to levy (take) your paycheck, bank account, auto or other property if we do not receive your payment in full. We can also file a Notice of Federal Tax Lien, if we have not already done so.

PAY YOUR TAX TODAY

Account Summary

Form: 1040	Tax Period: 12-31-90
Prior Balance:	$3,270.79
Last Payment:	$0.00
Penalty to date:	$40.64
Interest to date:	$94.03
New Balance:	$3,405.46

TAX ASSESSED $1684.00 (W/O INTEREST)

See enclosed Publication 594 that explains your rights and responsibilities as a taxpayer

Questions? Call us at 1-800-829-0815

Please mail this part with your payment, payable to Internal Revenue Service

Notice Number: CP 504
Notice Date: 04-14-97

Write on your check:

1040	12-31-90	399-10-2606

Amount Due: $3,405.46

399102606 UP SELT 30 0 9012 670 00000340546

Internal Revenue Service
CINCINNATI, OH 45999

RICHARD L & BETTY L SELTZER
4839 W QUAIL RUN DR
NEW PALESTINE IN 46163-9641398

P 901 779 882

002180 91:2

Department of the Treasury
Internal Revenue Service
CINCINNATI, OH 45999

Notice Number CP 504
Notice Date 04-14-97
SSN/EIN: 399-10-2606
Caller ID: 874127

RICHARD L & BETTY L SELTZER
4839 W QUAIL RUN DR
NEW PALESTINE IN 46163-9641398

3991026061101

Final Notice !!

We Intend to levy. Please respond NOW.

(To avoid additional penalty and interest, pay your overdue tax in full today.)

Our records indicate you have not paid your overdue tax. The law requires that you pay your tax at the time you file your return. This is formal notice of our intent to levy (take) your paycheck, bank account, auto or other property if we do not receive your payment in full. We can also file a Notice of Federal Tax Lien, if we have not already done so.

PAY YOUR TAX TODAY

Account Summary

Form: 1040	Tax Period: 12-31-91
Prior Balance:	$3,056.46
Last Payment:	$0.00
Penalty to date:	$41.84
Interest to date:	$87.88
New Balance:	$3,186.18

TAX ASSESSED $ 1129.00 (W/O INTEREST)

See enclosed Publication 594 that explains your rights and responsibilities as a taxpayer.

Questions? Call us at 1-800-829-8815

Please mail this part with your payment, payable to Internal Revenue Service

Notice Number CP 504
Notice Date 04-14-97

write on your check:

1040	12-31-91	399-10-2606

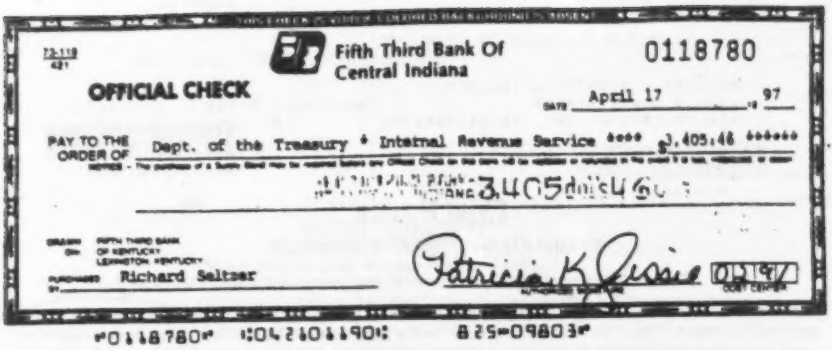
Amount Due: $3,186.18

399102606 UP 1ELT 30 0 9112 670 00000318618

Internal Revenue Service
CINCINNATI, OH 45999

RICHARD L & BETTY L SELTZER
4839 W QUAIL RUN DR
NEW PALESTINE IN 46163-9641398

1990



Fifth Third Bank Of Central Indiana

0118780

OFFICIAL CHECK

DATE April 17 97

PAY TO THE ORDER OF Dept. of the Treasury • Internal Revenue Service **** $3,405.46 ******

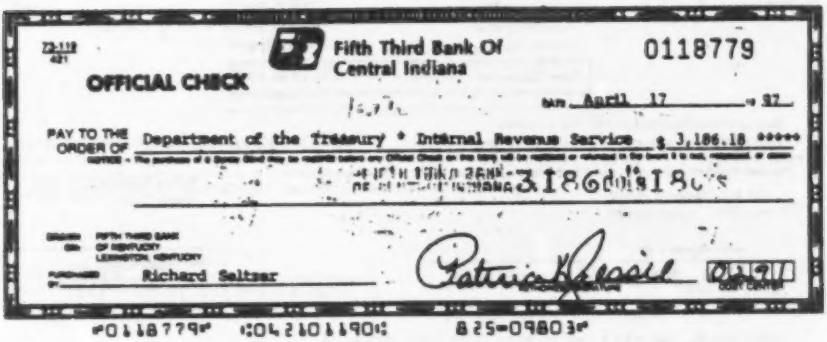
3,405dols46cts

Richard Seltzer

Patricia K Jessie

⑈0118780⑈ ⑆042010190⑆ 825=09803⑈

1991



Fifth Third Bank Of Central Indiana

0118779

OFFICIAL CHECK

DATE April 17 97

PAY TO THE ORDER OF Department of the Treasury • Internal Revenue Service $ 3,186.18 *****

3186dols18cts

Richard Seltzer

Patricia K Jessie

⑈0118779⑈ ⑆042010190⑆ 825=09803⑈

of H.R. 2337 by the 104th Congress was January 3, 1996 at the second session. Appellant believes that this law's specific reference in footnotes on pages 7 and 8 above, that "—the Secretary (of the Treasury) shall have the burden of producing reasonable and probative information concerning such deficiency--" (underlinings added) supercedes Tax Court's opinion that any IRS decision is "presumed correct" and "erroneous proof was sole burden of petitioners" based on a 1933 case, 63 years old, cited by the Tax Court on page 6 above.

TAX COURT'S CERTIFIED OLD AND NEW LISTINGS
Appellate Rules 10 and 11 on the Record.

Appellant charges the facts show the Tax Court certified listings of Entries into the Record are erroneous, incomplete and unlawful changes and deletions are evident. There are 3 listings dated November 20, 1996, December 4, 1996 and December 18, 1996, a "new", revised listing of the documents supposedly in the case record. A cursory review of the December 18, 1996 listing enclosing a misdated November 20, 1996 (now 12/04/96) list of instances show factual changes and deletions between 0001 to 0022 listings with new December 18, 1996 No. 1 through 23 with added, unidentified "exhibits" A through H, 1 and 3 through 10, exhibit 1 and petitioner's "exhibit 2, Not Admitted", as new records additions. More important fact is the deletion of appellant's Tax Court ordered Brief and multiple exhibits which is listed on the November 20, 1996 list but IS NOT LISTED on the December 18, 1996 list to the Seventh Circuit Court. This Brief from petitioners was dated April 11, 1996 and addressed to Judge Carluzzo on his order in the February 16, 1996 Tax Court Trial. See Trial Transcript Pages No., 44, line 1 through 45, line 24. Appellant has referenced the Seventh Circuit Court's Rule 28(d) in these statements on facts (page 2 above). But under Rule 28(d)(1) and (2), appellant must state the facts without argument or comment and give a fair summary and refernce page or pages or appendices in the record where a stated fact appears. These many changes, deletions and unexplained disclosures as a "certified", supposedly true record, leaves appellant in an unfair and adversely disadvantaged position; how can he know if the Appellate Court's disclosures compare with his records. What must he reference and what document is pertinent? In this regard, appellant's Stipulations descussed on Transcript pages 44 and 45 (above), is at Appendix L. References will be made necessary to submissions of renumbered and relisted docket Entries by the Tax Court dated on December 18, 1996 to Mr. Thomas F. Strubbe, Clerk of the Seventh Circuit Court. Reasons behind Tax-Court renumberings, relistings and deletions between the November and December listings served on appellant are not understood. Further, legal aspects that now exist with "tampered" document entries (if such be the case) are further problems for the Seventh Circuit Court at this time. One example; the Trial Transcript of great evidential value to appellant in his charges of Trial improprieties against Judge Carluzzo, was No. 8 on the November 20, 1996 and

the December 4, 1996 listings but is now entered as Document No. 11 on the December 18, 1996 listing. Also, Trial Memorandums were moved from old 0007 to new Nos. 9-10. Also, Tax Court Indexing of the Trial Transcript is missing.

ERRONEOUS COMPUTATIONS; WILLIAM A. SELTZER (?)

Computations are discussed in Statements, page 2 above. Appellant's Appendix D Enclosed July 10, 1996 letter with July 26, 1996 letter.

July 26,1996
Ref: Docket No. 25353-93,
Seltzers v. Comm., IRS

Richard L./Betty L. Seltzer
4839 W Quail Run Drive
New Palestine, Indaina 46163
(317) 861-5182

United States Tax Court
Washington, D.C. 20217
Attn: Lewis R. Carluzzo, Special Trial Judge

We object to the Court's actions and lack of adjudicatory actions as evidenced in it's July 17, 1996 order that petitioners should file a notice of objection to respondent's Rule 155 computation on or before August 16,1996. Foremost, we did not ask for extension. We, on July 10,1996 returned all documents with manifest errors and citing as petitioner a William A. Seltzer-1- to your Court. See Encloser 1. We did ask for immediate advice on receipt of correct IRS computations and Court documents so we could properly respond. We have nothing in hand to respond to, as the Court states in above July 17, 1996 letter.

Our computations are before this Court in the record and transcript and brief dated respectively April 14, 1994, February 16, 1995 (Enclosures 2 and 3) and April 11, 1995. Despite our repetitive references to the IRS Code 4027-3 to 40276, Sections 72(d) through 72(f) as preponderant statutory evidence supporting our computations as 1989,1990 and 1991 repayments into CSRA annuity, this Court adversely and unlawfully totally disregards such factual evidences. This is a lack of adjudication, a loss of due process wrongfully withheld and a judicial lack of ipartiality and faimess. Referenced T.C. Memo 1996-240 refers only to code section 72(a) (on page 7) quoting only gross income which has little to do with above sections 72(d) to (f) which relate to not-fully taxable income. See again Encls. 2 and 3.

Rule 155(c) cites findings and conclusions on issues to be disposed of before Rule 155 applies. Further, we have no IRS compoutations nor have we recieved any corrected computations from either this Court or respondent. We can NOT RESPOND to something we do not have. We believe Rule 155 reference is premature without correct computations. This Court's order for a filing of objections to non-existent computations by August 16, 1996 is meaningless. As we asked in Encl. 1, we are waiting for this Court's response and additional findings and conclusions on our April 11, 1995 Brief ordered by Judge Carluzzo as well as issues we presented in Encls. 2 and 3, to respondent IRS.

Enclosures as stated. Copy to Chief Judge M. A. Cohen and respondent.

Richard L. Seltzer Betty L. Seltzer, wife

1. There is a William Seltzer in the Indianapolis phone book.

July 10, 1996

Through:
Mary Ann Cohen, Chief Judge

Clerk, U.S. Tax Court
400 Second Street, N.W.
Washington, D.C. 20217-0002

Richard L./Betty L/ Seltzer
4839 W. Quail Run Drive
New Palestine, Indiana 46163
(317) 861-5182

Ref: Tax Court Case 25353-93, Seltzers v. Commissioner of Internal Revenue.

We are returning all documents dated July 5,1996 from the Court and dated July 1, 1996 from respondent because of manifest errors in the pages throughout.

Respondent's explanations of adjustments missing for year 1991 on schedule page 4A; unless 1991 total is now $1,563.00 instead of $2,092.00, an amount we still do not agree with.

Social Security adjustments still do not reflect 1989-1991 repayments of $6,268.00 on joint SSA Benefit Incomes of $12,500.00, on schedule pages 3, 3A and 3B.

Computer print-out pages identified as "employee #3597920724 Page 002 of 002 PAGE 001, 4 each" are not understood as to reasons for mailing to us without comments?

Responden't's computations here are not the same computations we returned to respondent as Rule 155 iss on June 24, 1996. See our letter copy herewith (Exhibit 1).

Finally, all enteries titled "RESPONDENT'S COMPUTATION FOR ENTRY OF DECISION" totalling 6 pages cite:

WILLIAM A. SELTZER
Petitioner
4839 W. Quail Run Drive
New Palestine , IN 45163
Tel. No. 317-861-5182

There is no William A. Seltzer at this address. Zip Code is 46163.

We ask for immediate advice from the Court. Will corrected information be sent to us so we can properly respond to the Court with our Notice of Objections to respondent's CORRECT computations with ours?

We further ask the Court to cancel it's suspense date of July 26, 1996 for any resultant action on our part pending the Court's reply to us on this matter. Copy served on respondent this date by mail.

Richard L. Seltzer, Pro Se Betty L. Seltzer, wife

MEETING AT IRS OFFICE
THURSDAY, APRIL 14, 1994, 9:30A.M.
MR. RICHARD L. SELTZER-MS. C.M. ANSLINGER

Years of IRS Alleged Tax Deficiencies Discussed were 1989, 1990, 1991.

Authorities: Internal Revenue Code 4027-3/4027-6, Sections 72(d)-(f) Employees Annuities and Recoverable Contributions.

Sec 72(d)--amounts recieved as annuity shall be excluded from the gross income until excluded amount is equal to amount consideration contributed by an employee.

72(f)-- amounts paid directly to employee at time contributions of amounts were made would not be includable in gross income.

IRS Regulation 1.212-1, Sec. 2005-2006-- Expenses for Production of Income that are ordinary and neccessary including rent and management of investment and property. Legal fees, associated costs, office/ home expenses were allowed for 1989, 1990 but not 1991.

1989- $1,193.00 1990-$915.00 1991- $2,757.00

Evidences in Irs Records/Letters for 1989, 1990 and 1991.

1989	1990	1991
$202.52 x 12= $2,430	(same) $2,430	(same) $2,430
$64.00 x 72= $4,608	$67.00 x 12= $804	(same) $804
$330.00 x 12= $3,960	(same) $3,960	$359.00 x 12=$4,302
$10,998	$431.00 x 6= $2,588	(same) $2,558
Civil Serv. Comm.	$9,782	$10,124
Social Sec. Admin.	x .047 Cola	x .054 Cola
Military Service	$10,242	$10,671
	Merit Sys. Prot. Bd.	

Alleged IRS Taxes Due, Penalties as of 1991

1989- ($10,998) Tax(s)- $1,807/$1,980, Pen.- $547/$646

1990- ($10,242) Tax- $2,032, Pen.- $383

1991- ($10,671) Tax $2,332, Pen.- $184

STIPULATIONS, AUTHORITIES AND ISSUES IN EVIDENCES
U. S. TAX -COURT TRIAL FOR
DATE FEBRUARY 16, 1995

Authorities and issues below include tax years 1989, 1990, and 1991and IRS cited deficiencies for these years. Issues result from the proper and lawful income exclusions and repayments, contributions or considerations in the Civil Service Retirement Act (CSRA) Annuity and Social Security Administration Benefits. One employer/agency, the Office of Personnel Management (OPM) is evident. Different findings, orders and related evidential documents are from (1) the U.S. Supreme Court, (2) the U.S. Federal Appeals Courts (Wash., D.C.), (3) the U.S. Merit Systems Protection Board (MSPB), (4) the Social Securities Admin. and (5) the U.S. Army.

Internal Revenue Authorities are quoted. IRS Code 4027-3/4027-6, Section 72, Employees Annuities and Recoverable Contributions.

> 72d-- amounts recieved as annuity shall be excluded from the gross income until excluded amount is equal to amount or consideration contributed by employee.
>
> 72f-- amounts paid directly to employee at time contributions of amounts were made would not be included in gross income.

IRS Publication 525, Taxable and Nontaxble Income; for use in preparing 1989, 1990 and 1991 Tax Returns. Repayments.

> Year Payment Deducted. If you use cash method you can take the deduction for the tax year in which you actually make the repayment.
>
> Repayments. If you repay, during your tax year, an amount included in income in an earlier year with an unresticted right to it you can deduct the amount repaid from your income for this year.

On Pensions ans Annuities That Are Not Fully Taxable; Lines 17a-17b, Instructions For Forms 1040 (1989, 1990 and 1991).

> Lines 17a and 17b. If your pension or annuity is not fully taxable the method used to figure the taxable part depends on annuity starting date (before July 1, 1986). Once you have figured the taxable part of you pension or annuity enter the total amount on line 17a and taxable part on

line 17b.

Major Issues in Contention.

$7,291 is disallowed, unfounded CSRA offset. $202.52 amounts. (36).
$4,080 is unfounded reduction. $88.69 amounts. 1983. (46).
$1,418 is unfounded offset for $412. (6). 1986
$27 and $37 unfounded SSA offsets from CSRA annuity. Continuing.
$51 unfounded offset ($1023 to $972). 1983

Total Refunds Ordered and Due From OPM. CSRA and MILLITARY CREDITS.

$12,789 (includes 7,291, 4,080, 1,418)
$13,712 (includes 27 and 37 SSA)
$6,268 (SSA Repayment)
$30,000 (retroactive on 216 days OPM approved but not included).

UNITED STATES TAX COURT
Washington, D.C. 20217

RICHARD L. AND BETTY L. SELTZER,	)	
	)	
Petitioners;	)	
	)	Docket No.
	)	25353-93
v.	)	
	)	
COMMISONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

ORDER

On July 30, 1996, the Court recieved a letter dated July 26, 1996, from petitioners. Upon due consideration, it is hereby

ORDERED that the Clerk of the Court file, as of the date received, petitioners' July 26, 1996 letter, including the three enclosures attached to the letter, as petitioners' Rule 155 computation.

(signed) Lewis R Carluzzo
Lewis R Carluzzo
Special Trial Judge

Dated: Washington, D.C.
August 1, 1996

Resubmitted June 7, 1996

Richard L./Betty L. Seltzer
4839 Quail Run Drive
New Palestine, Indiana 46163
(317)861-5182

Clerk
U.S. Tax Court
Washington, D.C. 20217-0002

Ref: Tax-Court Case (IRS No.)
25353-93, Seltzers v. Commissioner
of IRS

Attn: Lewis R. Carluzzo
Special Trial Judge
Washington, D.C.

Petitioners are in receipt of Your Honor's Memorandum Opinion filed May 23, 1996, received May 28th. Decision to be entered under Rule 155, Computation by Parties for Entry of Decision. Petitioners specifically refer to last page 8 statements in this Memorandum.

"Exclusions from income cannot be implied, but must be unambiguously proven--This petitioners have failed to do. --petitioners have not called our attention to any authority, and we know of none, that would permit them to exclude any poprtions of petitioner's annuity distributions from their income for the years in issue." Years are 1989-1991.

The Court's Opinion is wrong. Petitioners' Stipulations presented to the Court during trial in Indianapolis on February 13, 1995, were reviewed by this Judge Carluzzo and ordered into the petitioners' April 11, 1995 Brief. The petitoners' Brief has specially included these issues: (see Enclosures 1 and 2 herewith)

1. Brief page 2. OPM annuity offsets denied by the Federal Court of Appeals included $7,291.00 and $1,418.00 and $27 monthly for years 1989, 1990 and 1991. The sum of $73,827 and references to these IRS considerations as NON-CASH INVESTMENTS under Code 4027 (72e) AND NON-TAXABLE AS REFUNDS.

2. Brief page 3. Differences between W2PAs and RI 20-53 Forms was $12,225.00 (1989-1991). Respondent's figure is $13,844.90. Also proven, $12,789, $13,712, $6,268 and $30,000 military service deposits for years through 1991. Also, $88.69 monthly and $4,080 OPM offset.

3. All Brief pages from page 4 through 9 support petitioners' many claims on

non-cash, multiple year after year unfounded offsets that were refunds to the Civil Service CSRA funds. See particularly page 8 where IRS is contradicted and petitioners ask this Court to APPROVE NON-CASH DEDUCTIBLE LAWFUL REFUNDS TO THE CSRA OF $10,997.94, $10,242.00 AND $10,672.00 FOR 1989-1991.

Respondents was presented an exact copy of these stipulations seen and ordered into Brief evidences by this Judge Carluzzo on February 13, 1995.(1) A complete copy is attached herewith as word-for-word support of both IRS LAWS, RULES AND FACTS and petitioners' claims therein.

This Court and this Judge Carluzzo should rescind and reverse subject Memorandum Opinion of May 23, 1996, and RE-REVIEW PETITIONERS' EVIDENCES AS STATED IN ATTACHED STIPULATED FACTS AND IRS AUTHORITIES.

Also, Social Security Administration monies ARE A PART OF THIS CASE; such were increased for 1989-1991 by respondent's Indianapolis IRS Office. SSA refunds of $6,268.00 against 1989-1991 incomes of over $12,500.00 income were NON-CASH REFUNDS TO THE SSA FUNDS. See Forms-1099 Enclosures 3-1 and 3-2.

Enclosures:

1. Brief (4/11/95).
2. Petitioners'Stipulations (2/13/95).
3. SSA Forms-1099 (2)

Respectfully,

_____
Richard L. Seltzer, Pro Se.

_____
Betty L. Seltzer

(1) Stipulations presented to this Judge and his order and comments regarding Brief are shown in the Official Court Reporter's Transcript page 43, line 2 through page 45, line 23. This Judge Carluzzo ordered EXCERPTS NOT THE COMPLETE ENCLOSURES NOW HEREWITH AS ENCL. 2.

June 18, 1996

Richard L./Betty L. Seltzer
4839 W. Quail Run Drive
New Palestine, Indiana 46163
(317) 861-5182

Chief Judge
U.S. Tax Court
Washington, D.C. 20217-0002

Ref: Tax-Court Case (IRS No.) 25353-93, Seltzers v. Commissioner of IRS.

Your Honor:

We seemingly have been ill served by your Court. We complied with the Court's request for extra enclosures with our resubmitted Computation(s) under the Court's Rule 155(b), dated June 7, 1996. A copy was received by us dated as filed on June 12, 1996 with words "AS MOTION FOR RECONSIDERATION" added by the Court; further another stamp at bottom of page citing "DENIED" on June 12, 1996 (same date) with words "(signed) Lewis R. Carluzzo" added by the Court.

We have, in good faith, complied with Rule 155(b), citing specific repayment amounts made to OPM by us in 1989, 1990 and 1991 by again resubmitting factual evidences of dollar amounts, periods and documents in preponderant support of our claims of Tax Court errors of oversights of such evidences and particulary lack of adjudicated review. We further showed facts of improprieties of the sitting Judge (L.R. Carluzzo) as shown by the transcript. So far in this case, the same Judge Carluzzo has denied review of such evidences and seemingly herein has also (out of hand) denied review of our submission under Rule 155(b) which IS NOT A "MOTION FOR RECONSIDERATION."

We request an unbiased and complete review of our resubmission with preponderant facts of errors and oversights by your Court. We have absolutely no idea nor reason of understanding what the unsigned and stamped "DENIAL" means. Denial of what?

Respectufully,

Richard L. Seltzer, Pro Se

Betty L. Seltzer, wife

September 6, 1996

Richard L./Betty L. Seltzer
4839 W. Quail Run Drive
New Palestine, Indiana 46163
(317) 861-5182

U.S. Tax Court
400 Second Street, N.W.
Washington, D.C. 20217-0002

Through Chief Judge May Ann Cohen
To: Lewis R. Carluzzo, Speical Trial Judge

We are in receipt of your August 30, 1996 Decision stating in part "--Rule 155 computations and incorporating herein the facts recited in repondent's computations as the findings of the Court--". Underlinings added.

There are no Rule 155 computations existing that were either correctly or partially submitted to either the Court or to us, by respondent in this case. To the contrary as the Court knows, we returned the incomplete and wrong figures sent us by respondent to respondent. We also returned to the Court (yourself) the totally wrong and baseless Rule 155 computations with our July 26, 1996 letter and enclosures. Another copy is herewith. Note the Encl. 1 errors cited.

The Court (yourself) has improperly and with insufficient facts, evidences or adjudication issues a knowingly wrong decision. We expect immediate recall of this decision that was totally outside of the specific authority of Rule 155 conditions on computations form case parties. We complied to the best of our ability; respondent has not done so. The Court is negligent in not recogninzing improprieties as noted in our enclosures herewith.

Sir, we are being unduly harassed by these untenable and continuing Court "errors" we must content with. We expect recall of your August 30, 1996 decision as defective at best.

Enclosures as stated.

Richard L. Seltzer, Pro Se
(for wife Betty also)

Copy (less encl.) to respondent.

FORM SSA-1099-SOCIAL SECURITY BENEFIT STATEMENT

1993

- PART OF YOUR SOCIAL SECURITY BENEFITS SHOWN IN BOX 5 MAY BE TAXABLE INCOME
- SEE THE REVERSE FOR MORE INFORMATION

Box 1. Name
RICHARD L SELTZER

Box 2. Beneficiary's Social Security Number
399-10-2606

Box 3. Benefits Paid in 1993	Box 4. Benefits Repaid to SSA in 1993	Box 5. Net Benefits for 1993 (Box 3 minus Box 4)
*$10,324.80	$6,084.60	$4,240.20

DESCRIPTION OF AMOUNT IN BOX 3

Paid by check or direct deposit	$3,801.00
Medicare premiums paid for you	$439.20
Deductions for work or other adjustments	$6,084.60
Total Additions	$10,324.80
Benefits for 1993	$10,324.80

DESCRIPTION OF AMOUNT IN BOX 4

Deductions for work or other adjustments $6,084.60

Box 6. Address

RICHARD L SELTZER
4839 W QUAIL RUN DR
NEW PALESTINE IN 46163-9641

Box 7. Claim Number (Use this number if you need to contact SSA.)

399-10-2606A

*INCLUDES
$12.00 paid in 1993 for 1992
$12.00 paid in 1993 for 1991
$12.00 paid in 1993 for 1989
paid in 1993 for
$37.00 other tax years

Form SSA-1099-SM (1-94) DO NOT RETURN THIS FORM TO SSA OR IRS

FORM SSA-1099–SOCIAL SECURITY BENEFIT STATEMENT

1993

- PART OF YOUR SOCIAL SECURITY BENEFITS SHOWN IN BOX 5 MAY BE TAXABLE INCOME
- SEE THE REVERSE FOR MORE INFORMATION

Box 1. Name
BETTY L SELTZER

Box 2. Beneficiary's Social Security Number
278-24-4635

Box 3. Benefits Paid in 1993	Box 4. Benefits Repaid to SSA in 1993	Box 5. Net Benefits for 1993 (Box 3 minus Box 4)
$2,178.00	$183.60	$1,994.40

DESCRIPTION OF AMOUNT IN BOX 3

Paid by check or direct deposit	$1,665.00
Medicare premiums paid for you	$329.40
Deductions for work or other adjustments	$183.60
Total Additions	$2,178.00
Benefits for 1993	$2,178.00

DESCRIPTION OF AMOUNT IN BOX 4

Deductions for work or other adjustments	$183.60

Box 6. Address

BETTY L SELTZER
4839 W QUAIL RUN DR
NEW PALESTINE IN 46163-9641

Box 7. Claim Number (Use this number if you need to contact SSA.)

399-10-2606B

*INCLUDES
$12.00 paid in 1993 for 1992

Form SSA-1099-SM (1-94) DO NOT RETURN THIS FORM TO SSA OR IRS

THE WITNESS: "Yes". This isn't true. The 1989 Notice of Annuity Adjustment for payment dated 01/01/89 shows new status in gross monthly annuity as 1089.00. Total for 1989 on this notice received by petitioners on December 12, 1988, is to be $13,068.00 and net payment is 868.56 X 12 = $10,422.72, not the total $11,111.28 shown on respondent's Trial Exhibit I. See Enclosures 1 and Exhibits 6 and 10.

d. Between 1983 and 1988 these "differences" between the W2PAs and the RI 20-53 Forms totalled for the years is $12,225.00. Even respondent's figure carried through 1991 totals oa page 4 of respondent's Trial Memorandum is $13,844.90. In effect, respondent's own witness Smith contradicts these amounts on transcript page 85 to the Court.

e. Distriburbing also is the untruth of this same witness to the Court as stated on transcript page 86: "Yes, initially the Board (MSPB) instructed us to return the total of these deductions (the $7,291) to him." (Court) "What was the ultimate disposition of that 7291, the refund?" A. "A subsequent order from the Merit Systems Protection Board rescinded that so we did not refund the money." There was not an MSPB rescission of the $7,291.00 issue of overpayment collections for 36 months at $202.52 monthly through 1989. OPM ingnored MSPB and Federal Court orders on refunds of the $7,291 and SSA $27 issues until two partial payments were made of $2060 in 1992 and $1033 in 1993, both of which were again included in Gross Income as reported to IRS on the W2PA forms for these years. THESE WERE REFUNDED PARTIAL AMOUNTS ON TOTALS COLLECTED, OFFSET AND REDUCED FROM ANNUITY AS FOLLOWS (cited in Conference-Matters Brief dated January 17, 1995 and Tax-Court Trial Memorandum dated February 13, 1995):

(1). $12,789 (incl. 7,291, 4,080, 1,418) Partial $2,060 (1992).
(2). $13,712 (27.00 and 37.00 issues) Partial $1,033 (1993).
(3). $6,268 (SSA Benefits repaid)
(4). $30,000 (216 days, $330.00 approved/credited military service) Military Service credits can be contributed or deposited toward the annuity at any time before or after retirement.

4 The sums above, OPM generated as overpayment collections computed retroactively to 1983 except for the $4,080 ($88.69 monthly offset) made to 1974. Petitioners' Exhibit 3, OPM letters dated December 21, 1989 and October 12, 1989 show these unfoundend and unlawful collections of unproven overpayments. All these overpayments collections were made by